

1 ^{HB} BILL NO. 77
 2 INTRODUCED BY Barrett Lay Conduelle
 3 By Request of admin. Code Comm. Vincent
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 5 REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE;
 6 AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213,
 7 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227
 8 THROUGH 82-4229, AND 82A-107, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 82-4201, R.C.M. 1947, is amended to
 12 read as follows:

13 "82-4201. Short title. This act ~~part~~ sections 82-4201
 14 through 82-4225 shall be known and may be cited as the
 15 "Montana Administrative Procedure Act".

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

18 "82-4202. Definitions. For purposes of this act ~~part~~,
 19 the following definitions apply:

20 (1) "Agency" means any ~~board, bureau, commission,~~
 21 ~~department, authority or officer~~ agency, as defined in
 22 82-4227, of the state government ~~authorized by law to make~~
 23 ~~rules and to determine contested cases,~~ except that the
 24 provisions of this act ~~part~~ shall do not apply to the
 25 following:

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 otherwise~~
 6 ~~covered by this act shall not be exempt because the governor~~
 7 ~~has been designated as a member thereof;~~
 8 ~~(d) the state military establishment and agencies~~
 9 ~~concerned with civil defense and recovery from hostile~~
 10 ~~attack;~~
 11 ~~(e)~~ (a) the state board of pardons, except that ~~said~~
 12 ~~the~~ board shall be subject to the requirements of ~~section 3~~
 13 ~~[82-4203] and 5 [82-4205] of this act~~ and its rules shall be
 14 published in the Montana administrative code and register;
 15 ~~(f)~~ (b) the supervision and administration of any
 16 penal, ~~mental, medical or eleemosynary~~ institution with
 17 regard to the ~~admission, release,~~ institutional supervision,
 18 custody, control, care, or treatment of ~~inmates,~~ prisoners
 19 ~~or patients;~~
 20 ~~(g)~~ (c) ~~the administration and management of~~
 21 ~~educational institutions;~~ the board of regents and the
 22 Montana university system;
 23 ~~(h)~~ (d) the financing, construction, and maintenance of
 24 public works.
 25 (2) "Rule" means each agency regulation, standard, or

1 statement of general applicability that implements,
 2 interprets, or prescribes law or policy or describes the
 3 organization, procedures, or practice requirements of an
 4 agency. Substantive rules are either legislative rules,
 5 which if adopted in accordance with this part and under
 6 expressly delegated authority have the force of law and when
 7 not so adopted are invalid, or adjective or interpretive
 8 rules, which may be adopted in accordance with this part and
 9 under express or implied authority to codify an
 10 interpretation of a statute although such interpretation
 11 lacks the force of law. The term includes the amendment or
 12 repeal of a prior rule, but does not include:

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

16 (b) declaratory rulings issued pursuant to ~~section 18~~
 17 ~~[82-4218] of this act;~~

18 ~~(c) intra-agency memoranda;~~

19 ~~(d) (c)~~ rules relating to the use of public works,
 20 facilities, streets, and highways, when the substance of
 21 such rules is indicated to the public by means of signs or
 22 signals;

23 ~~(e) (d)~~ seasonal rules adopted annually relating to
 24 hunting, fishing, and trapping when there is a statutory
 25 requirement for the publication of such rules, and rules

1 adopted annually relating to the seasonal recreational use
 2 of lands and waters owned or controlled by the state when
 3 the substance of such rules is indicated to the public by
 4 means of signs or signals;

5 ~~(f) (e) rules relating to personnel standards, job~~
 6 ~~classifications or salary ranges for agency employees,~~
 7 ~~implementing the state personnel classification plan, the~~
 8 ~~state wage and salary plan, or the state wide budgeting and~~
 9 ~~accounting system;~~

10 ~~(g) (f)~~ 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~~ 82-4205 and shall be
 13 published 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, transfer, or amendment of

1 a license.

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

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

10 Section 3. Section 82-4203, R.C.M. 1987, is amended to
11 read as follows:

12 "82-4203. Rules describing agency organization and
13 procedures -- public inspection of rules -- model rules.

14 (1) In addition to other rule-making requirements imposed
15 by law, each agency shall:

16 (a) ~~Adopt~~ adopt as a rule a description of its
17 organization, stating the general course and method of its
18 operations and the methods whereby the public may obtain
19 information or make submissions or requests. The notice and
20 hearing requirements contained in ~~section~~ 82-4204 do not
21 apply to adoption of a rule relating to a description of its
22 organization.

23 (b) ~~Adopt~~ adopt rules of practice, not inconsistent
24 with statutory provisions, setting forth the nature and
25 requirements of all formal and informal procedures

1 available, including a description of all forms and
2 instructions used by the agency;

3 (c) ~~Make~~ make available for public inspection all
4 rules and all other written statements of policy or
5 interpretations formulated, adopted, or used by the agency
6 in the discharge of its functions;

7 (d) ~~Upon~~ upon request of any person or agency, provide
8 a copy of any rule. Unless otherwise provided by statute, an
9 agency may require the payment of the cost of providing such
10 copies.

11 (2) No agency rule ~~shall be~~ is valid or effective
12 against any person or party whose rights have been
13 substantially prejudiced by an agency's failure to comply
14 with the public inspection requirement herein.

15 (3) The attorney general shall prepare, ~~as soon as is~~
16 ~~practicable after the passage of this act,~~ a model form for
17 a rule describing the organization of agencies and model
18 rules of practice for agencies to use as a guide in
19 fulfilling the requirements of ~~section~~ 82-4203(1). The
20 attorney general shall add to, amend, or revise the model
21 rules from time to time as he ~~shall~~ considers necessary
22 for the proper guidance of agencies. The model rules, and
23 additions, amendments, or revisions thereto, shall be
24 appropriate for the use of as many agencies as is
25 practicable and shall be filed with the secretary of state

1 and provided to any agency upon request. The adoption by an
2 agency of all or part of the model rules ~~shall~~ does not
3 relieve the agency from following the rule-making procedures
4 required by this act part."

5 Section 4. Section 82-4203.1, R.C.M. 1947, is amended
6 to read as follows:

7 "82-4203.1. Legislative review of rules. (1) ~~The~~
8 ~~secretary of state shall, on the date the legislature~~
9 ~~convenes in regular session in 1974, transmit to both the~~
10 ~~senate and house of representatives one (1) copy of all~~
11 ~~rules in the Montana administrative code, not including~~
12 ~~superseded or repealed rules.~~

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

19 ~~(3) The legislature may, by joint resolution, repeal any~~
20 rule in the Montana administrative code. If a rule is
21 repealed, the legislature shall, in the joint resolution,
22 state its objections to the repealed rule. If an agency
23 adopts a new rule to replace the repealed rule, the agency
24 shall adopt the new rule in accordance with the objections
25 stated by the legislature in the joint resolution. If the

1 legislature does not repeal a rule filed with it before the
2 adjournment of that regular session, the rule remains valid.

3 ~~(4) (2)~~ The legislature may also, by joint resolution,
4 direct a change to be made in any rule in the Montana
5 administrative code or direct the adoption of an additional
6 rule. If a change in any rule or the adoption of an
7 additional rule is directed to be made, the legislature
8 shall, in the joint resolution, state the nature of the
9 change or the additional rule to be made, and its reasons
10 therefor. The agency shall, in the manner provided in the
11 Montana Administrative Procedure Act, adopt a new rule in
12 accordance with the legislative direction.

13 ~~(5) (3)~~ Rules made by agencies, and changes in rules
14 directed by the legislature, under subsection ~~(4) (2)~~ of this
15 section, shall conform and be pursuant to statutory
16 authority."

17 Section 5. Section 82-4203.2, R.C.M. 1947, is amended
18 to read as follows:

19 "82-4203.2. Administrative code committee —
20 appointment and term of members — officers. The
21 administrative code committee consists of four ~~(4)~~ members
22 of the senate and four ~~(4)~~ members of the house of
23 representatives appointed before the ~~sixtieth~~ 60th
24 legislative day of the regular session in the same manner as
25 standing committees of the respective houses are appointed.

1 A vacancy on the committee occurring when the legislature is
 2 not in session shall be filled by the selection of a member
 3 of the legislature by the remaining members of the
 4 committee. No more than two ~~(2)~~ of the appointees of each
 5 house may be members of the same political party. A member
 6 of the committee shall serve until his term of office as a
 7 legislator ends or until the end of the ~~sixtieth~~ 60th
 8 legislative day of the session of the biennium following his
 9 appointment or until his successor is appointed, whichever
 10 occurs first. The committee shall elect one ~~(1)~~ of its
 11 members as chairman and such other officers as it ~~deems~~
 12 considers necessary."

13 Section 6. Section 82-4203.3, R.C.M. 1947, is amended
 14 to read as follows:

15 "82-4203.3. Meetings. The committee shall meet as
 16 often as may be necessary, during and between legislative
 17 sessions. Committee members shall be reimbursed from the
 18 appropriation to the legislative council for their ~~actual~~
 19 ~~and necessary~~ expenses incurred as a result of interim
 20 meetings, including mileage as allowed under 59-501, actual
 21 expenses as allowed under 59-538 and 59-539, and paid
 22 compensation as provided by law for interim standing
 23 committees."

24 Section 7. Section 82-4203.4, R.C.M. 1947, is amended
 25 to read as follows:

1 "82-4203.4. Appointment of employees and consultants.
 2 The administrative code committee may ~~appoint~~ retain
 3 whatever employees, consultants, or counsel as are necessary
 4 to carry out the provisions of this ~~act~~ part and to advise
 5 the publisher in relation to the text and legal authority of
 6 the material published in the register or the code, within
 7 the limitations of legislative appropriations."

8 Section 8. Section 82-4203.5, R.C.M. 1947, is amended
 9 to read as follows:

10 "82-4203.5. Powers of the committee. (1) The committee
 11 shall review all proposed rules ~~referred to it under section~~
 12 ~~82-4204~~ filed with the administrative code commissioner and
 13 may:

14 (a) prepare written recommendations for the adoption,
 15 amendment, or rejection of a rule and submit those
 16 recommendations to the department proposing the rule when a
 17 rule-making hearing will not be held in accordance with the
 18 provisions of ~~section~~ 82-4204;

19 (b) prepare recommendations for the adoption,
 20 amendment, or rejection of a rule and submit oral or written
 21 testimony at a rule-making hearing; or

22 (c) ~~request~~ require that a rule-making hearing be held
 23 in accordance with the provision of ~~section~~ 82-4204.

24 (2) The committee shall prepare a report to the
 25 legislature at least once each biennium and may recommend

1 amendments to the Montana Administrative Procedure Act or
 2 the repeal, amendment, or adoption of a rule as provided in
 3 ~~section~~ 82-4203.1."

4 Section 9. There is a new R.C.M. section, to be
 5 codified within the Montana Administrative Procedure Act,
 6 that reads as follows:

7 Administrative code commissioner — appointment,
 8 duties, and authority. (1) There is created within the
 9 office of secretary of state the office of administrative
 10 code commissioner.

11 (2) The administrative code commissioner shall be
 12 appointed by and subject to the general supervision and
 13 policy of the secretary of state.

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

25 (4) The administrative code commissioner shall publish

1 all notices, rules, and interpretations filed with him, at
 2 least once a month or as directed by the administrative code
 3 committee, in a publication called the Montana
 4 administrative code register. He shall send the register
 5 without charge to each person listed in 82-4206(5) and to
 6 each member of the legislature requesting the same. He
 7 shall send the register to any other person who pays a
 8 subscription fee which he shall fix in consultation with the
 9 administrative code committee.

10 (5) The administrative code commissioner shall deposit
 11 all fees he collects in the general fund.

12 (6) The administrative code commissioner may charge
 13 agencies a filing fee for material to be published in the
 14 code or register based on an estimated cost of printing,
 15 which he shall fix in consultation with the administrative
 16 code committee.

17 Section 10. Section 82-4204, R.C.M. 1947, is amended
 18 to read as follows:

19 "82-4204. Adoption, — amendment, or repeal of rules
 20 — emergency rules. (1) Prior to the adoption, amendment, or
 21 repeal of any rule, the agency shall:

22 (a) ~~Give~~ give written notice of its intended action.
 23 The notice shall include a statement of either the terms or
 24 substance of the intended action or a description of the
 25 subjects and issues involved, rationale for the intended

1 action, and the time when, place where, and manner in which
 2 interested persons may present their views thereon. The
 3 notice shall be filed with the ~~secretary of state~~
 4 administrative code commissioner for publication in the
 5 Montana administrative register as provided in ~~section~~
 6 82-4206(2) and mailed to persons who have made timely
 7 requests to the agency for advance notice of its rule-making
 8 proceedings. The notice shall be published and mailed at
 9 least ~~twenty (20)~~ 30 days in advance of the agency's
 10 intended action. If any statute ~~shall provide~~ provides for a
 11 different method of publication, the affected agency shall
 12 comply with the statute in addition to the requirements
 13 contained herein. However, in no case shall may the notice
 14 period be less than ~~twenty (20)~~ 30 days or more than 6
 15 months.

16 (b) ~~Afford~~ afford interested persons at least 20 days'
 17 notice of a hearing and ~~fourteen (14)~~ 28 days to submit
 18 data, views, or arguments, orally or in writing. In the case
 19 of substantive rules, opportunity for oral hearing shall be
 20 granted if requested by either ~~ten per cent (10%)~~ or
 21 ~~twenty-five (25)~~ of the persons who will be directly
 22 affected by the proposed rule, by a governmental subdivision
 23 or agency, or by an association having not less than
 24 ~~twenty-five (25)~~ members who will be directly affected. An
 25 ~~interested person may file a written request with the agency~~

1 ~~to extend a hearing date up to twenty (20) days~~ agency may
 2 continue a hearing date for cause. Contested case procedures
 3 need not be followed in hearings held pursuant to this
 4 section. ~~Where~~ If a hearing is otherwise required by
 5 statute, nothing herein ~~shall be deemed to alter~~ alters that
 6 requirement. The agency shall consider fully written and
 7 oral submissions respecting the proposed rule. Upon adoption
 8 of a rule, an agency, ~~if requested to do so by an interested~~
 9 ~~person either prior to adoption or within thirty (30) days~~
 10 ~~thereafter~~, shall issue a concise statement of the principal
 11 reasons for and against its adoption, incorporating therein
 12 its reasons for overruling the considerations urged against
 13 its adoption.

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

17 (2) If an agency finds that an imminent peril to the
 18 public health, safety, or welfare requires adoption of a
 19 rule upon fewer than ~~twenty (20)~~ days' notice and states in
 20 writing its reasons for that finding, it may proceed,
 21 without prior notice or hearing or upon any abbreviated
 22 notice and hearing that it finds practicable, to adopt an
 23 emergency rule. The rule may be effective for a period not
 24 longer than ~~one hundred and twenty (120)~~ days, but the
 25 adoption of an identical rule under subsections (1) (a) and

1 (1) (b) of this section is not precluded. The sufficiency of
2 the reasons for a finding of imminent peril to the public
3 health, safety, or welfare ~~shall be~~ is subject to judicial
4 review.

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

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

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

25 (6) Each agency shall at least annually review its

1 rules to determine if any new rule should be adopted or any
2 existing rule should be modified or repealed."

3 Section 11. There is a new R.C.M. section to be
4 codified within the Montana Administrative Procedure Act,
5 that reads as follows:

6 Authority for rules. (1) Except as provided in 82-4203,
7 nothing in this part confers authority upon or augments the
8 authority of any state agency to adopt, administer, or
9 enforce any rule. To be effective, each substantive rule
10 adopted must be within the scope of authority conferred and
11 in accordance with standards prescribed by other provisions
12 of law.

13 (2) Whenever by the express or implied terms of any
14 statute a state agency has authority to adopt rules to
15 implement, interpret, make specific, or otherwise carry out
16 the provisions of the statute, no rule adopted is valid or
17 effective unless consistent and not in conflict with the
18 statute and reasonably necessary to effectuate the purpose
19 of the statute.

20 Section 12. Section 82-4205, R.C.M. 1947, is amended
21 to read as follows:

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

1 ~~before the effective date of this act and remaining in~~
 2 ~~effect. Any rule not so filed shall be deemed to have been~~
 3 ~~abrogated by the agency and shall be void and of no effect.~~

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

10 ~~(a) (1) If~~ if a later date is required by statute or
 11 specified in the rule, the later date shall be the effective
 12 date;

13 ~~(b) (2) Subject~~ subject to applicable constitutional or
 14 statutory provisions, an emergency rule shall become
 15 effective immediately upon filing with the ~~secretary of~~
 16 ~~state, administrative code commissioner~~ or at a stated date
 17 ~~less than ten (10) days~~ following publication in the Montana
 18 administrative ~~code or~~ register, if the agency finds that
 19 this effective date is necessary because of imminent peril
 20 to the public health, safety, or welfare. The agency's
 21 finding and a brief statement of reasons therefor shall be
 22 filed with the rule. The agency shall take appropriate
 23 measures to make emergency rules known to every person who
 24 may be affected by them.

25 ~~(3) The secretary of state may prescribe a format,~~

1 ~~style and arrangement for rules which are filed pursuant to~~
 2 ~~this act and may refuse to accept the filing of any rule~~
 3 ~~that is not in substantial compliance therewith. He shall~~
 4 ~~keep and maintain a permanent register of all rules filed~~
 5 ~~(including superseded and repealed rules), which shall be~~
 6 ~~open to public inspection, and shall provide copies of any~~
 7 ~~rule upon request of any person or agency. Unless otherwise~~
 8 ~~provided by statute, the secretary of state may require the~~
 9 ~~payment of the cost of providing such copies."~~

10 Section 13. Section 82-4206, R.C.M. 1947, is amended
 11 to read as follows:

12 "82-4206. Publication and distribution of rules and
 13 notices. (1) The ~~secretary of state~~ administrative code
 14 commissioner shall, ~~as soon as is practicable after the~~
 15 ~~effective date of this act,~~ compile, index, arrange,
 16 rearrange, correct errors or inconsistencies without
 17 changing the meaning, intent, or effect of any rule, and
 18 publish all rules filed pursuant to this act part in a
 19 publication which shall be known as the ~~Montana~~
 20 ~~administrative code~~ administrative rules of Montana (herein
 21 referred to as the code). ~~The code shall be printed or~~
 22 ~~otherwise duplicated, in looseleaf form.~~ The ~~secretary of~~
 23 ~~state~~ administrative code commissioner shall supplement,
 24 revise, and publish the code, or any part thereof, as often
 25 as he ~~deems~~ considers necessary. He may include such

1 editorial notes, cross references, and other matter as he
 2 and the administrative code committee consider desirable or
 3 advantageous. He shall publish supplements to the code at
 4 such times and in such form as he considers appropriate.

5 (2) The ~~secretary of state~~ administrative code
 6 committee shall each month or at more frequent intervals
 7 compile and publish the Montana administrative register
 8 (herein referred to as the register). The register shall
 9 contain ~~two~~ (2) three sections, a rules section, and a
 10 notice section, and an interpretation section.

11 (a) The rules section of the register shall contain
 12 all rules filed ~~with the secretary of state~~ since the
 13 compilation and publication of the preceding issue of the
 14 register, ~~and in the case of the first issue, since the~~
 15 ~~effective date of this act, except that nothing herein shall~~
 16 ~~require that rules filed pursuant to section 5 (1) [82-4205~~
 17 ~~(1)] be published in the register. This section of the~~
 18 ~~register shall be printed or duplicated in the case style as~~
 19 ~~the code and shall be set up so as to permit changes to be~~
 20 ~~inserted as pages in the code in lieu of the pages~~
 21 ~~containing superseded material and to permit additions to~~
 22 ~~the code together with the concise statement of reasons~~
 23 required under 82-4204(1)(b).

24 (b) The notice section of the register shall contain
 25 all rule-making notices filed with the ~~secretary of state~~

1 ~~administrative code commissioner~~ pursuant to ~~section 4~~
 2 ~~[82-4204] of this act~~ since the compilation and publication
 3 of the preceding register, ~~and in the case of the first~~
 4 ~~issue of the register, since the effective date of this act.~~
 5 ~~This section shall be printed or duplicated in such manner~~
 6 ~~as to make it easily distinguishable from the rules section~~
 7 ~~of the register and so that separate copies of the notice~~
 8 ~~section can be provided to any person upon request to the~~
 9 ~~secretary of state. The secretary of state may require the~~
 10 ~~payment of the cost of providing such copies.~~

11 (c) The interpretation section of the register shall
 12 contain all opinions of the attorney general and all
 13 declaratory rulings of agencies issued since the publication
 14 of the preceding register.

15 ~~(e)(d)~~ Each issue of the register shall contain a ~~title~~
 16 ~~page with the name "Montana administrative register,"~~ the
 17 issue number and date of the register, and a table of
 18 contents. Each page of the register shall contain the issue
 19 number and date of the register of which it is a part. The
 20 ~~secretary of state~~ administrative code commissioner may
 21 include ~~in~~ with the register ~~instructions or information~~ to
 22 help the user in ~~correctly making insertions or deletions in~~
 23 ~~the code and to keep the code current~~ relating the register
 24 to the Montana administrative code.

25 (3) The ~~secretary of state~~ administrative code

1 commissioner, with the consent of the adopting agency, may
 2 omit from the code or register any rule the publication of
 3 which would be unduly cumbersome, expensive, or otherwise
 4 inexpedient, if the rule ~~is printed or duplicated form is~~
 5 merely incorporates by reference a model code, federal
 6 agency rule, or like publication made available on
 7 application to the agency, and if the code or register
 8 contains a notice stating the citation and general subject
 9 matter of the omitted rule and stating how a copy may be
 10 obtained.

11 (4) The code shall be arranged, indexed, and printed
 12 or duplicated in such manner as to permit separate
 13 publication of portions thereof relating to individual
 14 agencies. An agency may make arrangements with the ~~secretary~~
 15 ~~of state~~ administrative code commissioner for the printing
 16 of as many copies of such separate publications as it may
 17 require. The cost of any such separate publications shall be
 18 paid by the agency.

19 (5) The ~~secretary of state~~ administrative code
 20 commissioner shall distribute copies of the code, and
 21 supplements or revisions thereto ~~and the register~~ without
 22 charge to the following:

- 23 (a) Attorney attorney general, one (1) copy;
 24 (b) Clerk clerk of each court of record of this state,
 25 one (1) copy;

1 (c) Clerk clerk of United States district court for
 2 the district of Montana, one (1) copy;

3 (d) Clerk clerk of United States court of appeals for
 4 the ninth circuit, one (1) copy;

5 (e) ~~Each each~~ county clerk of this state, for use of
 6 county officials and the public, one (1) copy, which may
 7 be maintained in a public library in the county seat or in
 8 the county offices;

9 (f) State state law library, one (1) copy;

10 (g) State state historical society, one (1) copy;

11 (h) ~~Each each~~ unit of the ~~university of Montana~~
 12 Montana university system, one (1) copy;

13 (i) Law law library of the university of Montana, one
 14 (1) copy;

15 (j) ~~Montana~~ legislative council, three (3) copies;

16 (k) ~~Library library~~ of congress, one (1) copy;

17 (l) state library, one copy, State law library, for
 18 ~~such exchanges as it may establish with libraries of other~~
 19 ~~states, not to exceed fifty (50) copies;~~

20 ~~Law library of the university of Montana, for such~~
 21 ~~exchanges as it may establish with institutions of higher~~
 22 ~~education in other states, not to exceed fifty (50) copies.~~

23 (5) The ~~secretary of state~~ administrative code
 24 commissioner, clerk of each court of record in the state,
 25 clerk of each county in the state, and the librarians for

1 the state law library and the university of Montana law
 2 library shall maintain a complete, current set of the code,
 3 including supplements or revisions thereto ~~and additions or~~
 4 ~~changes published in the register.~~ Such persons shall also
 5 maintain ~~a file of rule making notices published in the~~
 6 register issues published during the preceding ~~two~~ (2)
 7 years. The ~~secretary of state~~ administrative code
 8 commissioner shall also maintain a permanent ~~register of~~
 9 ~~rule making notices set of the registers.~~

10 ~~(6)~~ (7) The ~~secretary of state~~ administrative code
 11 commissioner shall make copies of and subscriptions to the
 12 code, and supplements or revisions thereto and the register
 13 available to any person at prices fixed to cover publication
 14 and mailing costs.

15 ~~(7)~~ (8) The ~~secretary of state~~ administrative code
 16 commissioner shall determine the cost of supplying copies of
 17 the code, and supplements or revisions thereto and the
 18 register. Such cost shall be the approximate cost of
 19 printing or duplicating and mailing. However, a uniform
 20 price per page or group of pages may be established without
 21 regard to differences in cost of printing different parts of
 22 the code, and supplements or revisions thereto and the
 23 register.

24 ~~(8) All fees collected by the secretary of state shall~~
 25 ~~be deposited to the general fund."~~

1 Section 14. Section 82-4207, R.C.M. 1947, is amended
 2 to read as follows:

3 "82-4207. Petition for adoption of rules. An
 4 interested person or, when the legislature is not in
 5 session, a member of the legislature on behalf of an
 6 interested person may petition an agency requesting the
 7 promulgation, amendment, or repeal of a rule. Each agency
 8 shall prescribe by rule the form for petitions and the
 9 procedure for their submission, consideration, and
 10 disposition. Within ~~sixty~~ (60) days after submission of a
 11 petition, the agency either shall deny the petition in
 12 writing (stating its reasons for the denial) or shall
 13 initiate rule-making proceedings in accordance with ~~section~~
 14 82-4204."

15 Section 15. Section 82-4208, R.C.M. 1947, is amended
 16 to read as follows:

17 "82-4208. Judicial notice of rules. The courts shall
 18 take judicial notice of any rule filed and published under
 19 the provisions of this ~~act~~ part."

20 Section 16. Section 82-4212, R.C.M. 1947, is amended
 21 to read as follows:

22 "82-4212. Examination of evidence by agency —
 23 proposed orders. When in a contested case a majority of the
 24 officials of the agency who are to render the final decision
 25 have not heard the case or read the record, the decision, if

1 adverse to a party to the proceeding other than the agency
 2 itself, shall may not be made until a proposal for decision
 3 is served upon the parties and an opportunity is afforded to
 4 each party adversely affected to file exceptions and present
 5 briefs and oral argument to the officials who are to render
 6 the decision. The proposal for decision shall contain a
 7 statement of the reasons therefor and of each issue of fact
 8 or law necessary to the proposed decision, prepared by the
 9 person who conducted the hearing ~~or one who has read the~~
 10 ~~record~~ unless he becomes unavailable to the agency. If the
 11 person who conducted the hearing becomes unavailable to the
 12 agency, proposed findings of fact may be prepared by a
 13 person who has read the record only if the demeanor of
 14 witnesses is considered immaterial by all parties. The
 15 parties may waive compliance with this section by written
 16 stipulation."

17 Section 17. Section 82-4213, R.C.M. 1947, is amended
 18 to read as follows:

19 "82-4213. Final orders -- notification. (1) A final
 20 decision or order adverse to a party in a contested case
 21 shall be in writing or stated in the record. A final
 22 decision shall include findings of fact and conclusions of
 23 law, separately stated. Findings of fact, if set forth in
 24 statutory language, shall be accompanied by a concise and
 25 explicit statement of the underlying facts supporting the

1 findings. If, in accordance with agency rules, a party
 2 submitted proposed findings of fact, the decision shall
 3 include a ruling upon each proposed finding. Parties shall
 4 be notified either personally or by mail of any decision or
 5 order. Upon request, a copy of the decision or order shall
 6 be delivered or mailed forthwith to each party and to his
 7 attorney of record. Each conclusion of law shall be
 8 supported by authority or by a reasoned opinion.

9 (2) Each agency shall index and make available for
 10 public inspection all final decisions and orders, including
 11 declaratory rulings under ~~section 18 [82-4218], issued after~~
 12 ~~the effective date of this act.~~ No such agency decision or
 13 order ~~shall be~~ is valid or effective against any person or
 14 party, nor may it be invoked by the agency for any purpose,
 15 until it has been made available for public inspection as
 16 herein required. This provision is not applicable in favor
 17 of any person or party who has actual knowledge thereof or
 18 when a state statute or federal statute or regulation
 19 prohibits public disclosure of the contents of a decision or
 20 order."

21 Section 18. Section 82-4215, R.C.M. 1947, is amended
 22 to read as follows:

23 "82-4215. Licenses. (1) When the grant, denial,
 24 renewal, revocation, suspension, annulment, withdrawal,
 25 limitation, or amendment of a license is required by law to

1 be preceded by notice and opportunity for hearing, the
2 provisions of this ~~act~~ part concerning contested cases
3 apply.

4 (2) When a licensee has made timely and sufficient
5 application for the renewal of a license or a new license
6 with reference to any activity of a continuing nature, the
7 existing license does not expire until the application has
8 been finally determined by the agency, and, in case the
9 application is denied or the terms of the new license
10 limited, until the last day for seeking review of the agency
11 order or a later date fixed by order of the reviewing court.

12 (3) No revocation, suspension, annulment, withdrawal,
13 or amendment of any license is lawful unless, prior to the
14 institution of agency proceedings, the agency gave notice by
15 mail to the licensee of facts or conduct which warrant the
16 intended action, and the licensee was given an opportunity
17 to show compliance with all lawful requirements for the
18 retention of the license. If the agency finds that public
19 health, safety, or welfare imperatively requires emergency
20 action, and incorporates a finding to that effect in its
21 order, summary suspension of a license may be ordered
22 pending proceedings for revocation or other action. These
23 proceedings shall be promptly instituted and determined."

24 Section 19. Section 82-4216, R.C.M. 1947, is amended
25 to read as follows:

1 "82-4216. Judicial review of contested cases. (1) (a)
2 A person who has exhausted all administrative remedies
3 available within the agency and who is aggrieved by a final
4 decision in a contested case is entitled to judicial review
5 under this ~~act~~ part. This section does not limit utilization
6 of or the scope of judicial review available under other
7 means of review, redress, relief, or trial de novo provided
8 by statute. A preliminary, procedural, or intermediate
9 agency action or ruling is immediately reviewable if review
10 of the final agency decision would not provide an adequate
11 remedy.

12 (b) A party who proceeds before an agency under the
13 terms of a particular statute shall not be precluded from
14 questioning the validity of that statute on judicial review,
15 but such party may not raise any other question not raised
16 before the agency, unless it is shown to the satisfaction of
17 the court that there was good cause for failure to raise the
18 question before the agency.

19 (2) (a) Proceedings for review shall be instituted by
20 filing a petition in district court within ~~thirty~~ (30) days
21 after service of the final decision of the agency, or if a
22 rehearing is requested, within ~~thirty~~ (30) days after the
23 decision thereon. Except as otherwise provided by statute,
24 the petition shall be filed in the district court for the
25 county where the petitioner resides or has his principal

1 place of business, or where the agency maintains its
2 principal office. Copies of the petition shall be promptly
3 served upon the agency and all parties of record.

4 (b) The petition shall include a concise statement of
5 the facts upon which jurisdiction and venue are based, a
6 statement of the manner in which the petitioner is
7 aggrieved, and the ground or grounds specified in subsection
8 (7) of this section upon which the petitioner contends he is
9 entitled to relief. The petition shall demand the relief to
10 which the petitioner believes he is entitled, and the demand
11 for relief may be in the alternative.

12 (3) Unless otherwise provided by statute, the filing
13 of the petition shall not stay enforcement of the agency's
14 decision. The agency may grant, or the reviewing court may
15 order, a stay upon terms which it ~~deems~~ considers proper.

16 (4) Within ~~thirty~~ (30) days after the service of the
17 petition, or within further time allowed by the court, the
18 agency shall transmit to the reviewing court the original or
19 a certified copy of the entire record of the proceeding
20 under review. By stipulation of all parties to the review
21 proceedings, the record may be shortened. A party
22 unreasonably refusing to stipulate to limit the record may
23 be taxed by the court for the additional costs. The court
24 may require or permit subsequent corrections or additions to
25 the record.

1 (5) If, before the date set for hearing, application
2 is made to the court for leave to present additional
3 evidence, and it is shown to the satisfaction of the court
4 that the additional evidence is material and that there were
5 good reasons for failure to present it in the proceeding
6 before the agency, the court may order that the additional
7 evidence be taken before the agency upon conditions
8 determined by the court. The agency may modify its findings
9 and decision by reason of the additional evidence and shall
10 file that evidence and any modifications, new findings, or
11 decisions with the reviewing court.

12 (6) The review shall be conducted by the court without
13 a jury and shall be confined to the record. In cases of
14 alleged irregularities in procedure before the agency, not
15 shown in the record, proof thereof may be taken in the
16 court. The court, upon request, shall hear oral argument and
17 receive written briefs.

18 (7) The court ~~shall~~ may not substitute its judgment
19 for that of the agency as to the weight of the evidence on
20 questions of fact. The court may affirm the decision of the
21 agency or remand the case for further proceedings. The court
22 may reverse or modify the decision if substantial rights of
23 the appellant have been prejudiced because the
24 administrative findings, inferences, conclusions, or
25 decisions are:

1 (a) in violation of constitutional or statutory
2 provisions;

3 (b) in excess of the statutory authority of the
4 agency;

5 (c) made upon unlawful procedure;

6 (d) affected by other error of law;

7 (e) clearly erroneous in view of the reliable,
8 probative, and substantial evidence on the whole record;

9 (f) arbitrary or capricious or characterized by abuse
10 of discretion or clearly unwarranted exercise of discretion;

11 or

12 (g) because findings of fact, upon issues essential to
13 the decision, were not made although requested."

14 Section 20. Section 82-4217, R.C.M. 1947, is amended
15 to read as follows:

16 "82-4217. Appeals. An aggrieved party may obtain
17 review of a final judgment of a district court under this
18 ~~act part~~ by appeal to the supreme court within ~~sixty~~ {60}
19 days after entry of judgment. Such appeal shall be taken in
20 the manner provided by law for appeals from district courts
21 in civil cases. Unless otherwise provided by statute or
22 unless the agency has granted a stay through the completion
23 of the judicial review process;

24 (1) ~~If~~ if appeal is taken from a judgment of the
25 district court affirming an agency decision, the agency

1 decision shall not be stayed except upon order of the
2 supreme court; except that, in cases where a stay is in
3 effect at the time of the filing of notice of appeal, the
4 stay shall be continued by operation of law for ~~twenty~~ {20}
5 days from the date of filing of the notice;

6 (2) ~~If~~ if appeal is taken from a judgment of the
7 district court reversing or modifying an agency decision,
8 the agency decision shall be stayed pending final
9 determination of the appeal unless the supreme court orders
10 otherwise."

11 Section 21. Section 82-4220, R.C.M. 1947, is amended
12 to read as follows:

13 "82-4220. Subpoenas and enforcement — compelling
14 testimony. (1) An agency conducting any proceeding subject
15 to this ~~act part~~ shall have the power to require the
16 furnishing of such information, the attendance of such
17 witnesses, and the production of such books, records,
18 papers, documents, and other objects as may be necessary and
19 proper for the purposes of the proceeding. In furtherance of
20 this power, an agency upon its own motion may, and upon
21 request of any party appearing in a contested case shall,
22 issue subpoenas for witnesses or subpoenas duces tecum. The
23 method for service of subpoenas, witness fees, and mileage
24 shall be the same as required in civil actions in the
25 district courts of the state. Except as otherwise provided

1 by statute, witness fees and mileage shall be paid by the
2 party at whose request the subpoena was issued.

3 (2) In case of disobedience of any subpoena issued and
4 served under this section or of the refusal of any witness
5 to testify as to any material matter with regard to which he
6 may be interrogated in a proceeding before the agency, the
7 agency may apply to any district court in the state for an
8 order to compel compliance with the subpoena or the giving
9 of testimony. If the agency fails or refuses to seek
10 enforcement of a subpoena issued at the request of a party
11 or to compel the giving of testimony ~~deemed~~ considered
12 material by a party, the party may make such application.
13 The court shall hear the matter as expeditiously as
14 possible. If the disobedience or refusal is found to be
15 unjustified, the court shall enter an order requiring
16 compliance. Disobedience of such order shall be punishable
17 by contempt of court in the same manner and by the same
18 procedures as is provided for like conduct committed in the
19 course of civil actions in district courts. If another
20 method of subpoena enforcement or compelling testimony is
21 provided by statute, it may be used as an alternative to the
22 method provided for in this section.

23 (3) Each agency shall provide in its rules of practice
24 for discovery prior to a contested case hearing, unless the
25 applicable statute provides for a trial de novo on appeal to

1 the district court."

2 Section 22. Section 82-4221, R.C.M. 1947, is amended
3 to read as follows:

4 "82-4221. Representation. Any person compelled to
5 appear in person or who voluntarily appears before any
6 agency or representative thereof shall be accorded the right
7 to be accompanied, represented, and advised by counsel. In a
8 proceeding before an agency, every party shall be accorded
9 the right to appear in person or by or with counsel but this
10 ~~act~~ part shall not be construed as requiring an agency to
11 furnish counsel to any such person."

12 Section 23. Section 82-4222, R.C.M. 1947, is amended
13 to read as follows:

14 "82-4222. Service. Except where a statute expressly
15 provides to the contrary, service in all agency proceedings
16 subject to the provisions of this ~~act~~ part and in
17 proceedings for judicial review thereof, shall be as
18 prescribed for civil actions in the district courts."

19 Section 24. Section 82-4223, R.C.M. 1947, is amended
20 to read as follows:

21 "82-4223. Construction and effect. Nothing in this ~~act~~
22 part shall be ~~deemed~~ considered to limit or repeal
23 requirements imposed by statute or otherwise recognized law.
24 No subsequent legislation shall be ~~deemed~~ considered to
25 supersede or modify any provision of this ~~act~~ part, whether

1 by implication or otherwise, except to the extent that such
2 legislation shall do so expressly."

3 Section 25. Section 82-4227, R.C.M. 1947, is amended
4 to read as follows:

5 "82-4227. Definitions. As used in this ~~act~~ chapter:

6 (1) "~~Agency~~ agency" means any board, bureau,
7 commission, department, authority, or officer of the state
8 or local government authorized by law to make rules,
9 determine contested cases, or enter into contracts except:

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 is not exempt
15 because the governor has been designated as a member
16 thereof; or

17 (d) the state military establishment and agencies
18 concerned with civil defense and recovery from hostile
19 attack.

20 (2) "~~Rule~~ rule" means any agency regulation, standard,
21 or statement of general applicability that implements,
22 interprets, or prescribes law or policy or describes the
23 organization, procedures, or practice requirements of any
24 agency. The term includes the amendment or repeal of a
25 prior rule, but does not include:

1 (a) statements concerning only the internal management
2 of an agency and not affecting private rights or procedures
3 available to the public;

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

6 (c) ~~intra-agency~~ intraagency memoranda.

7 (3) "~~Agency action~~" means the whole or a part of an
8 agency rule, license, order, or contract or the equivalent
9 or denial thereof."

10 Section 26. Section 82-4228, R.C.M. 1947, is amended
11 to read as follows:

12 "82-4228. Agency requirements. (1) Each agency shall
13 develop procedures for permitting and encouraging the public
14 to participate in agency decisions that are of significant
15 interest to the public. The procedures shall assure
16 adequate notice and assist public participation before a
17 ~~final decision is made on the adoption of a rule or policy,~~
18 ~~awarding a contract, granting or denying a permit, license~~
19 ~~or change of rate~~ agency action is taken that is of
20 significant interest to the public.

21 (2) An agency shall be ~~deemed~~ considered to have
22 complied with the notice provisions of this ~~act~~ section if:

23 (a) an environmental impact statement is prepared and
24 distributed as required by the Montana Environmental Policy
25 Act, Title 69, chapter 65;

1 (b) a proceeding is held as required by the Montana
2 Administrative Procedure Act, ~~Title 82, Chapter 42~~;

3 (c) a public hearing, after appropriate notice is
4 given, is held pursuant to any other provision of state law
5 or a local ordinance or resolution; or

6 (d) a newspaper of general circulation within the area
7 to be affected by a decision of significant interest to the
8 public has carried a news story or advertisement concerning
9 the decision prior to a final decision on a matter.

10 (3) Procedures for assisting public participation
11 shall include a method of affording interested persons
12 reasonable opportunity to submit data, views, or arguments,
13 orally or in written form, prior to making a final decision
14 that is of significant interest to the public.

15 (4) The provisions of this ~~act~~ section do not apply
16 to:

17 (a) an agency decision that must be made to deal with
18 an emergency situation affecting the public health, welfare,
19 or safety;

20 (b) an agency decision that must be made to maintain
21 or protect the interests of the agency, including but not
22 limited to the filing of a lawsuit in a court of law or
23 becoming a party to an administrative proceeding; or

24 (c) a decision involving no more than a ministerial
25 act.

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

8 Section 27. Section 82-4229, R.C.M. 1947, is amended
9 to read as follows:

10 "82-4229. Enforcement. The district courts of the
11 state have jurisdiction to set aside an agency decision
12 under ~~this act~~ 82-4228 upon petition of any person whose
13 rights have been prejudiced, made within ~~thirty~~ (30) days of
14 the date of the decision."

15 Section 28. Section 82A-107, R.C.M. 1947, is amended
16 to read as follows:

17 "82A-107. Duties and powers of department heads.
18 (1) Except as otherwise provided by law, each department
19 head shall:

20 (a) ~~Supervise~~ supervise, direct, account for,
21 organize, plan, administer, and execute the functions vested
22 in the department by this title or other law;

23 (b) ~~Establish~~ establish the policy to be followed by
24 the department and employees;

25 (c) ~~Compile~~ compile and submit reports and budgets for

1 the department as required by law or requested by the
2 governor;

3 (d) ~~Provide~~ provide the governor with any information
4 that he requests at any time on the operation of the
5 department;

6 (e) ~~Represent~~ represent the department in
7 communications with the governor;

8 (f) ~~Prescribe~~ prescribe rules, consistent with law and
9 rules established by the governor, for the administration of
10 the department; the conduct of the employees; the
11 distribution and performance of business; and the custody,
12 use, and preservation of the records, documents, and
13 property pertaining to department business. The lieutenant
14 governor, secretary of state, attorney general, auditor, and
15 superintendent of public instruction may prescribe their own
16 rules for their departments or offices, and the governor may
17 not prescribe rules for them. The rules described in this
18 subsection are limited to statements concerning only the
19 internal management of the agency and not affecting private
20 rights or procedures available to the public. This section
21 does not authorize the adoption of any rule as rules are
22 defined in the Montana Administrative Procedure Act.

23 (g) ~~Subject~~ subject to the approval of the governor,
24 establish the internal organizational structure of the
25 department, and allocate the functions of the department to

1 units to promote the economic and efficient administration
2 and operation of the department. The internal structure of
3 the department shall be established in accordance with
4 ~~section~~ 82A-104(2).

5 (h) ~~Subject~~ subject to law, and the state merit
6 system, if applicable, establish and make appointments to
7 necessary subordinate positions, and abolish unnecessary
8 positions;

9 (i) ~~Maintain~~ maintain a central office in Helena for
10 the department, and such other facilities throughout the
11 state as may be required for the effective and efficient
12 operation of the department.

13 (2) Except as otherwise provided by law, each
14 department head may:

15 (a) ~~Subject~~ subject to law, and the state merit
16 system, if applicable, transfer employees between positions,
17 remove persons appointed to positions, and change the
18 duties, titles, and compensation of employees within the
19 department;

20 (b) ~~Delegate~~ delegate any of the functions vested in
21 the department head to subordinate employees;

22 (c) ~~Apply~~ apply for, accept, administer, and expend
23 funds, grants, gifts, and loans from the federal government
24 or any other source in administering the department's
25 functions;

1 (d) ~~Enter~~ enter into agreements with federal, state,
2 and local agencies necessary to carry out the department's
3 functions."

4 Section 29. There is a new R.C.M. section that reads
5 as follows:

6 Transition schedule — public education rules. Rules
7 and policies of the board of public education and the state
8 superintendent of public instruction are subject to
9 82-4204(3) on and after October 1, 1977. Any such rules and
10 policies in effect on January 1, 1977, may be filed before
11 October 1, 1977, for publication in the administrative code
12 without being subject to the notice and hearing requirements
13 of 82-4204(1).

14 Section 30. There is a new R.C.M. section that reads
15 as follows:

16 Transition schedule — administration rules. Rules and
17 policies of the department of administration not exempted
18 from the Montana Administrative Procedure Act are subject to
19 82-4204(3) on and after October 1, 1977. The director of
20 administration shall discontinue publication of the Montana
21 administrative manual after that date but may continue the
22 second and third volumes of that manual under the title of
23 Statewide Budgeting and Accounting Manual. The director may
24 file any rules published in the first volume of the Montana
25 administrative manual as of January 1, 1977, with the

1 administrative code commissioner before October 1, 1977,
2 without being subject to the notice and hearing requirements
3 of 82-4204(1). The administrative code commissioner shall
4 arrange with the director of administration for publication
5 of the rules of the department of administration in a volume
6 separable from the administrative rules of Montana for the
7 convenience of state offices which do not wish to acquire
8 the entire code.

9 Section 31. There is a new R.C.M. section that reads
10 as follows:

11 Transition schedule — institutions rules. Rules and
12 policies of the department of institutions relating to
13 patients or inmates in a mental, medical, or eleemosynary
14 institution are subject to 82-4204(3) on and after October
15 30, 1977. Any such rules in effect on January 1, 1977, may
16 be filed before October 1, 1977, for publication in the
17 administrative code without being subject to the notice and
18 hearing requirements of 82-4204(1).

-End-

STATE OF MONTANA

REQUEST NO. 57-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 12, 19 77, there is hereby submitted a Fiscal Note for House Bill 77 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF LEGISLATION:

An act for the General Revision of the laws relating to Administrative Procedure.

ASSUMPTIONS:

1. Revision and recodification of the Administrative Code is made mandatory by recodification of the Revised Codes of Montana for simultaneous publication and effective dates.
2. Existing Administrative Code Manual must be published and updated in its present form during the period of recodification and revision.
3. Major part of recodification of Administrative Code will be done in 1979 biennium.
4. The method and frequency of the register will be changed. Publication will probably occur as needed rather than on a fixed schedule.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Proposed Law		
Personal Services	\$115,749	\$118,093
Operating Expenses	<u>207,560</u>	<u>174,710</u>
Total expenditure under proposed law	\$323,309	\$292,803
Expenditure under current law	<u>56,992</u>	<u>57,491</u>
Increased expenditure under proposed law	<u>\$266,317</u>	<u>\$235,312</u>

LOCAL IMPACT:

None

LONG-RANGE IMPACT:

Total expenditures will decrease following revision, recodification, and publication of the new Administrative Code. Estimated total expenditures are \$254,571 in FY 80 and \$238,170 in FY 81.

Richard L. Zaunger
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-13-77

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 57-77*Amended*

Form BD-15

In compliance with a written request received February 4, 19 77, there is hereby submitted a Fiscal Note for House Bill 77 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act for the general revision of the laws relating to administrative procedure.

ASSUMPTIONS:

1. Administrative Code will be published and up-dated in its present form at the same time as it is recodified and revised.
2. Method and frequency of publishing the register will be changed.
3. All members of the legislature will want copies of the Administrative Register. (Section 9 of House Bill 77).
4. Additional pages will need to be published in the Administrative Code if 3 agencies become subject to the APA (Section 29 of House Bill 77).
Additional pages will be published in the Register to accommodate Attorney General opinions (82-4206 (2) (c) of House Bill 77).
5. Additional FTEs will not be needed if funds for the revision and recodification are appropriated.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Expenditures under proposed law	\$74,266	\$62,989
Expenditures under current law	<u>56,992</u>	<u>57,491</u>
Increase in expenditures under proposed law*	<u>\$17,274</u>	<u>\$ 5,498</u>

*Does not include expenditures for revision and recodification, the costs for which may be substantial.

Richard L. Young Jr.
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-7-77

Approved by Committee
on Judiciary

HOUSE BILL NO. 77

INTRODUCED BY BARRETT, LORY, SCULLY, VINCENT,
BY REQUEST OF THE ADMINISTRATIVE CODE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE;
AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213,
82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227
THROUGH 82-4229, AND 82A-107, R.C.M. 1947."

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

Section 1. Section 82-4201, R.C.M. 1947, is amended to
read as follows:

"82-4201. Short title. This ~~act part~~ sections 82-4201
through 82-4225 shall be known and may be cited as the
"Montana Administrative Procedure Act".

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

"82-4202. Definitions. For purposes of this ~~act~~ part,
the following definitions apply:

(1) "Agency" means any ~~board, bureau, commission,
department, authority or officer~~ agency, as defined in
82-4227, of the state government ~~authorized by law to make
rules and to determine contested cases~~, except that the
provisions of this ~~act~~ part shall ~~do~~ 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
attacks;~~

~~(e)~~ (a) the state board of pardons, except that said
the board shall be subject to the requirements of ~~sections 3
[82-4203] and 5 [82-4205] of this act~~ and its rules shall be
published in the Montana administrative code and register;

~~(f)~~ (b) the supervision and administration of any
penal, ~~mental, medical or eleseeyary~~ institution with
regard to the ~~admission, release,~~ institutional supervision,
custody, control, care, or treatment of ~~inmates,~~ YOUTHS OR
prisoners or patients;

~~(g)~~ (c) the ~~administration and management of
educational institutions;~~ the board of regents and the
Montana university system;

~~(h)~~ (d) the financing, construction, and maintenance of
public works.

SECOND READING

1 (2) "Rule" means each agency regulation, standard, or
 2 statement of general applicability that implements,
 3 interprets, or prescribes law or policy or describes the
 4 organization, procedures, or practice requirements of an
 5 agency. Substantive rules are either legislative rules,
 6 which if adopted in accordance with this part and under
 7 expressly delegated authority have the force of law and when
 8 not so adopted are invalid, or adjective or interpretive
 9 rules, which may be adopted in accordance with this part and
 10 under express or implied authority to codify an
 11 interpretation of a statute although such interpretation
 12 lacks the force of law. The term includes the amendment or
 13 repeal of a prior rule, but does not include:

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

17 (b) declaratory rulings issued pursuant to ~~section 48~~
 18 ~~[82-4218] of this act;~~

19 ~~(c) intra-agency memoranda;~~

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

24 ~~(e) (d)~~ seasonal rules adopted annually relating to
 25 hunting, fishing, and trapping when there is a statutory

1 requirement for the publication of such rules, and rules
 2 adopted annually relating to the seasonal recreational use
 3 of lands and waters owned or controlled by the state when
 4 the substance of such rules is indicated to the public by
 5 means of signs or signals;

6 ~~(f) (e)~~ rules relating to personnel standards, job
 7 classifications or salary ranges for agency employees;
 8 implementing the state personnel classification plan, the
 9 state wage and salary plan, or the state wide budgeting and
 10 accounting system;

11 ~~(g) (f)~~ uniform rules adopted pursuant to interstate
 12 compact, except that such rules shall be filed in accordance
 13 with ~~section 10 [82-4210] of this act~~ 82-4205 and shall be
 14 published in the Montana administrative code ~~and register.~~

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

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

24 (5) "Licensing" includes any agency process respecting
 25 the grant, denial, renewal, revocation, suspension,

1 annulment, withdrawal, limitation, transfer, or amendment of
2 a license.

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

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

11 Section 3. Section 82-4203, R.C.M. 1947, is amended to
12 read as follows:

13 "82-4203. Rules describing agency organization and
14 procedures -- public inspection of rules -- model rules.

15 (1) In addition to other rule-making requirements imposed
16 by law, each agency shall:

17 (a) ~~Adopt~~ adopt as a rule a description of its
18 organization, stating the general course and method of its
19 operations and the methods whereby the public may obtain
20 information or make submissions or requests. The notice and
21 hearing requirements contained in ~~section~~ 82-4204 do not
22 apply to adoption of a rule relating to a description of its
23 organization.

24 (b) ~~Adopt~~ adopt rules of practice, not inconsistent
25 with statutory provisions, setting forth the nature and

1 requirements of all formal and informal procedures
2 available, including a description of all forms and
3 instructions used by the agency;

4 (c) ~~Make~~ make available for public inspection all
5 rules and all other written statements of policy or
6 interpretations formulated, adopted, or used by the agency
7 in the discharge of its functions;

8 (d) ~~Upon~~ upon request of any person or agency, provide
9 a copy of any rule. Unless otherwise provided by statute, an
10 agency may require the payment of the cost of providing such
11 copies.

12 (2) No agency rule ~~shall be~~ is valid or effective
13 against any person or party whose rights have been
14 substantially prejudiced by an agency's failure to comply
15 with the public inspection requirement herein.

16 (3) The attorney general shall prepare, ~~as soon as is~~
17 ~~practicable after the passage of this act,~~ a model form for
18 a rule describing the organization of agencies and model
19 rules of practice for agencies to use as a guide in
20 fulfilling the requirements of ~~section~~ 82-4203(1). The
21 attorney general shall add to, amend, or revise the model
22 rules from time to time as he ~~shall deem~~ considers necessary
23 for the proper guidance of agencies. The model rules, and
24 additions, amendments, or revisions thereto, shall be
25 appropriate for the use of as many agencies as is

1 practicable and shall be filed with the secretary of state
 2 and provided to any agency upon request. The adoption by an
 3 agency of all or part of the model rules shall ~~does~~ not
 4 relieve the agency from following the rule-making procedures
 5 required by this act part."

6 Section 4. Section 82-4203.1, R.C.M. 1947, is amended
 7 to read as follows:

8 "82-4203.1. Legislative review of rules. (1) ~~The~~
 9 ~~secretary of state shall, on the date the legislature~~
 10 ~~convenes in regular session in 1974, transmit to both the~~
 11 ~~senate and house of representatives one (1) copy of all~~
 12 ~~rules in the Montana administrative code, not including~~
 13 ~~superseded or repealed rules.~~

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

20 (2) The legislature may, by joint resolution, repeal
 21 any rule in the Montana administrative code. If a rule is
 22 repealed, the legislature shall, in the joint resolution,
 23 state its objections to the repealed rule. If an agency
 24 adopts a new rule to replace the repealed rule, the agency
 25 shall adopt the new rule in accordance with the objections

1 stated by the legislature in the joint resolution. If the
 2 legislature does not repeal a rule filed with it before the
 3 adjournment of that regular session, the rule remains valid.

4 ~~(4)(2)~~ The legislature may also, by joint resolution,
 5 direct a change to be made in any rule in the Montana
 6 administrative code or direct the adoption of an additional
 7 rule. If a change in any rule or the adoption of an
 8 additional rule is directed to be made, the legislature
 9 shall, in the joint resolution, state the nature of the
 10 change or the additional rule to be made, and its reasons
 11 therefor. The agency shall, in the manner provided in the
 12 Montana Administrative Procedure Act, adopt a new rule in
 13 accordance with the legislative direction.

14 ~~(5)(3)~~ Rules made by agencies, and changes in rules
 15 directed by the legislature, under subsection ~~(4)(2)~~ of this
 16 section, shall conform and be pursuant to statutory
 17 authority."

18 Section 5. Section 82-4203.2, R.C.M. 1947, is amended
 19 to read as follows:

20 "82-4203.2. Administrative code committee --
 21 appointment and term of members -- officers. The
 22 administrative code committee consists of four ~~(4)~~ members
 23 of the senate and four ~~(4)~~ members of the house of
 24 representatives appointed before the ~~sixtieth~~ 60th
 25 legislative day of the regular session in the same manner as

1 standing committees of the respective houses are appointed.
 2 A vacancy on the committee occurring when the legislature is
 3 not in session shall be filled by the selection of a member
 4 of the legislature by the remaining members of the
 5 committee. No more than two ~~(2)~~ of the appointees of each
 6 house may be members of the same political party. A member
 7 of the committee shall serve until his term of office as a
 8 legislator ends or until the end of the ~~sixtieth~~ 60th
 9 legislative day of the session of the biennium following his
 10 appointment or until his successor is appointed, whichever
 11 occurs first. The committee shall elect one ~~(4)~~ of its
 12 members as chairman and such other officers as it ~~deems~~
 13 considers necessary."

14 ~~Section 6. Section 82-4203.3, R.C.M. 1947, is amended~~
 15 ~~to read as follows:~~

16 ~~"82-4203.3. Meetings. The committee shall meet as~~
 17 ~~often as may be necessary, during and between legislative~~
 18 ~~sessions. Committee members shall be reimbursed from the~~
 19 ~~appropriation to the legislative council for their actual~~
 20 ~~and necessary expenses incurred as a result of interim~~
 21 ~~meetings, including mileage as allowed under 59-501, actual~~
 22 ~~expenses as allowed under 59-538 and 59-539, and paid~~
 23 ~~compensation as provided by law for interim standing~~
 24 ~~committees."~~

25 Section 6. Section 82-4203.4, R.C.M. 1947, is amended

1 to read as follows:

2 "82-4203.4. Appointment of employees and consultants.
 3 The administrative code committee may ~~appoint~~ retain
 4 whatever employees, consultants, or counsel as are necessary
 5 to carry out the provisions of this ~~act~~ part and to advise
 6 the publisher in relation to the text and legal authority of
 7 the material published in the register or the code, within
 8 the limitations of legislative appropriations."

9 Section 7. Section 82-4203.5, R.C.M. 1947, is amended
 10 to read as follows:

11 "82-4203.5. Powers of the committee. (1) The committee
 12 shall review all proposed rules ~~referred to it under section~~
 13 ~~82-4204 filed with the administrative code commissioner~~
 14 SECRETARY OF STATE and may:

15 (a) prepare written recommendations for the adoption,
 16 amendment, or rejection of a rule and submit those
 17 recommendations to the department proposing the rule when a
 18 rule-making hearing will not be held in accordance with the
 19 provisions of ~~section~~ 82-4204;

20 (b) prepare recommendations for the adoption,
 21 amendment, or rejection of a rule and submit oral or written
 22 testimony at a rule-making hearing; or

23 (c) ~~request~~ require that a rule-making hearing be held
 24 in accordance with the provision of ~~section~~ 82-4204.

25 (2) The committee shall prepare a report to the

1 legislature at least once each biennium and may recommend
2 amendments to the Montana Administrative Procedure Act or
3 the repeal, amendment, or adoption of a rule as provided in
4 section 82-4203.1."

5 ~~Section 9. There is a new R.C.M. section, to be~~
6 ~~codified within the Montana Administrative Procedure Act,~~
7 ~~that reads as follows:~~

8 ~~Administrative code commissioner appointment,~~
9 ~~duties, and authority. (1) There is created within the~~
10 ~~office of secretary of state the office of administrative~~
11 ~~code commissioner.~~

12 ~~(2) The administrative code commissioner shall be~~
13 ~~appointed by and subject to the general supervision and~~
14 ~~policy of the secretary of state.~~

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

1 ~~(4) The administrative code commissioner shall publish~~
2 ~~all notices, rules, and interpretations filed with him, at~~
3 ~~least once a month or as directed by the administrative code~~
4 ~~committee, in a publication called the Montana~~
5 ~~administrative code register. He shall send the register~~
6 ~~without charge to each person listed in 82-4206(5) and to~~
7 ~~each member of the legislature requesting the same. He~~
8 ~~shall send the register to any other person who pays a~~
9 ~~subscription fee which he shall fix in consultation with the~~
10 ~~administrative code committee.~~

11 ~~(5) The administrative code commissioner shall deposit~~
12 ~~all fees he collects in the general fund.~~

13 ~~(6) The administrative code commissioner may charge~~
14 ~~agencies a filing fee for material to be published in the~~
15 ~~code or register based on an estimated cost of printing,~~
16 ~~which he shall fix in consultation with the administrative~~
17 ~~code committee.~~

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

20 "82-4204. Adoption, — amendment, or repeal of rules
21 — emergency rules. (1) Prior to the adoption, amendment, or
22 repeal of any rule, the agency shall:

23 (a) Give give written notice of its intended action.
24 The notice shall include a statement of either the terms or
25 substance of the intended action or a description of the

1 subjects and issues involved, rationale for the intended
 2 action, and the time when, place where, and manner in which
 3 interested persons may present their views thereon. The
 4 notice shall be filed with the ~~secretary of state~~
 5 ~~administrative code commissioner~~ SECRETARY OF STATE for
 6 publication in the Montana administrative register as
 7 provided in ~~section~~ 82-4206(2) and mailed to persons who
 8 have made timely requests to the agency for advance notice
 9 of its rule-making proceedings. The notice shall be
 10 published and mailed at least ~~twenty (20)~~ 30 days in advance
 11 of the agency's intended action. If any statute ~~shall~~
 12 ~~provide~~ provides for a different method of publication, the
 13 affected agency shall comply with the statute in addition to
 14 the requirements contained herein. However, in no case ~~shall~~
 15 ~~may~~ the notice period be less than ~~twenty (20)~~ 30 days or
 16 more than 6 months.

17 (b) ~~Afford~~ afford interested persons at least 20 days'
 18 notice of a hearing and ~~fourteen (14)~~ 28 days to submit
 19 data, views, or arguments, orally or in writing. In the case
 20 of substantive rules, opportunity for oral hearing shall be
 21 granted if requested by either ~~ten per cent (10%)~~ or
 22 ~~twenty-five (25)~~ of the persons who will be directly
 23 affected by the proposed rule, by a governmental subdivision
 24 or agency, or by an association having not less than
 25 ~~twenty-five (25)~~ members who will be directly affected. An

1 ~~interested person may file a written request with the agency~~
 2 ~~to extend a hearing date up to twenty (20) days~~ agency may
 3 continue a hearing date for cause. Contested case procedures
 4 need not be followed in hearings held pursuant to this
 5 section. ~~Where~~ If a hearing is otherwise required by
 6 statute, nothing herein ~~shall be deemed to alter~~ alters that
 7 requirement. The agency shall consider fully written and
 8 oral submissions respecting the proposed rule. Upon adoption
 9 of a rule, an agency, ~~if requested to do so by an interested~~
 10 ~~person either prior to adoption or within thirty (30) days~~
 11 ~~thereafter~~, shall issue a concise statement of the principal
 12 reasons for and against its adoption, incorporating therein
 13 its reasons for overruling the considerations urged against
 14 its adoption.

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

18 (2) If an agency finds that an imminent peril to the
 19 public health, safety, or welfare requires adoption of a
 20 rule upon fewer than ~~twenty (20)~~ days' notice and states in
 21 writing its reasons for that finding, it may proceed,
 22 without prior notice or hearing or upon any abbreviated
 23 notice and hearing that it finds practicable, to adopt an
 24 emergency rule. The rule may be effective for a period not
 25 longer than ~~one hundred and twenty (120)~~ days, but the

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

6 (3) No rule ~~adopted after the effective date of this~~
~~act shall be~~ is valid unless adopted in substantial
 7 compliance with subsections (1) ~~and~~ or (2) of this section
 8 AND WITHIN 6 MONTHS OF THE PUBLISHING OF NOTICE THEREOF.

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

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

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 9. There is a new R.C.M. section to be
 6 codified within the Montana Administrative Procedure Act,
 7 that reads as follows:

8 Authority for rules. (1) Except as provided in 82-4203,
 9 nothing in this part confers authority upon or augments the
 10 authority of any state agency to adopt, administer, or
 11 enforce any rule. To be effective, each substantive rule
 12 adopted must be within the scope of authority conferred and
 13 in accordance with standards prescribed by other provisions
 14 of law.

15 (2) Whenever by the express or implied terms of any
 16 statute a state agency has authority to adopt rules to
 17 implement, interpret, make specific, or otherwise carry out
 18 the provisions of the statute, no rule adopted is valid or
 19 effective unless consistent and not in conflict with the
 20 statute and reasonably necessary to effectuate the purpose
 21 of the statute.

22 Section 10. Section 82-4205, R.C.M. 1947, is amended
 23 to read as follows:

24 "82-4205. Filing of rules — effective date of rules.
 25 ~~(1) On or before the 60th day following the effective date~~

1 ~~of this act, each agency shall file with the secretary of~~
 2 ~~state a certified copy of each rule adopted by it on or~~
 3 ~~before the effective date of this act and remaining in~~
 4 ~~effect. Any rule not so filed shall be deemed to have been~~
 5 ~~abrogated by the agency and shall be void and of no effect.~~

6 (2) Each agency shall file with the ~~secretary of state~~
 7 ~~administrative code commissioner~~ SECRETARY OF STATE a
 8 certified copy of each rule adopted by it ~~subsequent to the~~
 9 ~~effective date of this act.~~ Each rule shall become effective
 10 ~~ten (10) days~~ after publication in the Montana
 11 administrative register ~~or code~~ as provided in ~~section 6~~
 12 ~~[82-4206] of this act, except that:~~

13 ~~(a)~~ (1) If if a later date is required by statute or
 14 specified in the rule, the later date shall be the effective
 15 date;

16 ~~(b)~~ (2) ~~Subject~~ subject to applicable constitutional or
 17 statutory provisions, an emergency rule shall become
 18 effective immediately upon filing with the ~~secretary of~~
 19 ~~state, administrative code commissioner~~ SECRETARY OF STATE
 20 or at a stated date ~~less than ten (10) days~~ following
 21 publication in the Montana administrative ~~code or~~ register,
 22 if the agency finds that this effective date is necessary
 23 because of imminent peril to the public health, safety, or
 24 welfare. The agency's finding and a brief statement of
 25 reasons therefor shall be filed with the rule. The agency

1 shall take appropriate measures to make emergency rules
 2 known to every person who may be affected by them.

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

13 (3) THE SECRETARY OF STATE MAY PRESCRIBE A FORMAT,
 14 STYLE, AND ARRANGEMENT FOR RULES WHICH ARE FILED PURSUANT TO
 15 THIS PART AND MAY REFUSE TO ACCEPT THE FILING OF ANY RULE
 16 THAT IS NOT IN COMPLIANCE THEREWITH. HE SHALL KEEP AND
 17 MAINTAIN A PERMANENT REGISTER OF ALL RULES FILED (INCLUDING
 18 SUPERSEDED AND REPEALED RULES), WHICH SHALL BE OPEN TO
 19 PUBLIC INSPECTION, AND SHALL PROVIDE COPIES OF ANY RULE UPON
 20 REQUEST OF ANY PERSON OR AGENCY, UNLESS OTHERWISE PROVIDED
 21 BY STATUTE, THE SECRETARY OF STATE MAY REQUIRE THE PAYMENT
 22 OF THE COST OF PROVIDING SUCH COPIES.

23 Section 11. Section 82-4206, R.C.M. 1947, is amended
 24 to read as follows:

25 "82-4206. Publication and distribution of rules and

1 notices. (1) The ~~secretary of state administrative code~~
 2 ~~commissioner~~ SECRETARY OF STATE shall, ~~as soon as is~~
 3 ~~practicable after the effective date of this act,~~ compile,
 4 index, arrange, rearrange, correct errors or inconsistencies
 5 without changing the meaning, intent, or effect of any rule,
 6 and publish all rules filed pursuant to this act part in a
 7 publication which shall be known as the ~~Montana~~
 8 ~~administrative code~~ administrative rules of Montana (herein
 9 referred to as the code). ~~The code shall be printed or~~
 10 ~~otherwise duplicated, in looseleaf form.~~ The ~~secretary of~~
 11 ~~state administrative code commissioner~~ SECRETARY OF STATE
 12 shall supplement, revise, and publish the code, or any part
 13 thereof, as often as he ~~deems~~ considers necessary. He may
 14 include such editorial notes, cross references, and other
 15 matter as he and the administrative code committee consider
 16 desirable or advantageous. He shall publish supplements to
 17 the code at such times and in such form as he considers
 18 appropriate.

19 (2) The ~~secretary of state administrative code~~
 20 ~~committee~~ SECRETARY OF STATE shall each month or at more
 21 frequent intervals compile and publish the Montana
 22 administrative register (herein referred to as the
 23 register). The register shall contain ~~two (2)~~ three
 24 sections, a rules section, and a notice section, and an
 25 interpretation section.

1 (a) The rules section of the register shall contain
 2 all rules filed ~~with the secretary of state~~ since the
 3 compilation and publication of the preceding issue of the
 4 register, ~~and in the case of the first issue, since the~~
 5 ~~effective date of this act, except that nothing herein shall~~
 6 ~~require that rules filed pursuant to section 5 (1) [82-4205~~
 7 ~~(1)] be published in the register. This section of the~~
 8 ~~register shall be printed or duplicated in the same style as~~
 9 ~~the code and shall be set up so as to permit changes to be~~
 10 ~~inserted as pages in the code in lieu of the pages~~
 11 ~~containing superseded material and to permit additions to~~
 12 ~~the code together with the concise statement of reasons~~
 13 ~~required under 82-4204(1)(b).~~

14 (b) The notice section of the register shall contain
 15 all rule-making notices filed with the ~~secretary of state~~
 16 ~~administrative code commissioner~~ SECRETARY OF STATE pursuant
 17 to ~~section 4 [82-4204] of this act~~ since the compilation and
 18 publication of the preceding register, ~~and in the case of~~
 19 ~~the first issue of the register, since the effective date of~~
 20 ~~this act. This section shall be printed or duplicated in~~
 21 ~~such manner as to make it easily distinguishable from the~~
 22 ~~rules section of the register and so that separate copies of~~
 23 ~~the notice section can be provided to any person upon~~
 24 ~~request to the secretary of state. The secretary of state~~
 25 ~~may require the payment of the cost of providing such~~

1 copies.

2 (c) The interpretation section of the register shall
 3 contain all opinions of the attorney general and all
 4 declaratory rulings of agencies issued since the publication
 5 of the preceding register.

6 ~~(d)~~ Each issue of the register shall contain a title
 7 page with the name "~~Montana administrative register,~~" the
 8 issue number and date of the register, and a table of
 9 contents. Each page of the register shall contain the issue
 10 number and date of the register of which it is a part. The
 11 ~~secretary of state administrative code commissioner~~
 12 SECRETARY OF STATE may include ~~in~~ with the register
 13 ~~instructions or information to help the user in correctly~~
 14 ~~making insertions or deletions in the code and to keep the~~
 15 ~~code current relating the register to the Montana~~
 16 administrative code.

17 (3) The ~~secretary of state administrative code~~
 18 ~~commissioner SECRETARY OF STATE~~, with the consent of the
 19 adopting agency, may omit from the code or register any rule
 20 the publication of which would be unduly cumbersome,
 21 expensive, or otherwise inexpedient, if the rule ~~is printed~~
 22 ~~or duplicated form is~~ merely incorporates by reference a
 23 model code, federal agency rule, or like publication made
 24 available on application to the agency, and if the code or
 25 register contains a notice stating the citation and general

1 subject matter of the omitted rule and stating how a copy
 2 may be obtained.

3 (4) The code shall be arranged, indexed, and printed
 4 or duplicated in such manner as to permit separate
 5 publication of portions thereof relating to individual
 6 agencies. An agency may make arrangements with the ~~secretary~~
 7 ~~of state administrative code commissioner~~ SECRETARY OF STATE
 8 for the printing of as many copies of such separate
 9 publications as it may require. The cost of any such
 10 separate publications shall be paid by the agency.

11 (5) The ~~secretary of state administrative code~~
 12 ~~commissioner SECRETARY OF STATE~~ shall distribute copies of
 13 the code, and supplements or revisions thereto ~~and the~~
 14 ~~register~~ without charge to the following:

- 15 (a) ~~Attorney~~ attorney general, one ~~(1)~~ copy;
- 16 (b) ~~Clerk~~ clerk of each court of record of this state,
 17 one ~~(1)~~ copy;
- 18 (c) ~~Clerk~~ clerk of United States district court for
 19 the district of Montana, one ~~(1)~~ copy;
- 20 (d) ~~Clerk~~ clerk of United States court of appeals for
 21 the ninth circuit, one ~~(1)~~ copy;
- 22 (e) ~~Each~~ each county clerk of this state, for use of
 23 county officials and the public, one ~~(1)~~ copy, which may
 24 be maintained in a public library in the county seat or in
 25 the county offices;

- 1 ~~(f)~~ State ~~state~~ law library, one ~~(4)~~ copy;
- 2 ~~(g)~~ State ~~state~~ historical society, one ~~(4)~~ copy;
- 3 ~~(h)~~ Each ~~each~~ unit of the ~~university of Montana~~
- 4 ~~Montana university system~~, one ~~(4)~~ copy;
- 5 ~~(i)~~ Law ~~law~~ library of the university of Montana, one
- 6 ~~(4)~~ copy;
- 7 ~~(j)~~ Montana legislative council, three ~~(3)~~ copies;
- 8 ~~(k)~~ Library ~~library~~ of congress, one ~~(4)~~ copy;
- 9 ~~(l)~~ State ~~state~~ library, one copy, state law library, for
- 10 ~~such exchanges as it may establish with libraries of other~~
- 11 ~~states, not to exceed fifty (50) copies;~~
- 12 ~~Law library of the university of Montana, for such~~
- 13 ~~exchanges as it may establish with institutions of higher~~
- 14 ~~education in other states, not to exceed fifty (50) copies.~~
- 15 ~~(6)~~ The ~~secretary of state~~ ~~administrative code~~
- 16 ~~commissioner~~ SECRETARY OF STATE, clerk of each court of
- 17 record in the state, clerk of each county in the state, and
- 18 the librarians for the state law library and the university
- 19 of Montana law library shall maintain a complete, current
- 20 set of the code, including supplements or revisions thereto
- 21 ~~and additions or changes published in the register.~~ Such
- 22 persons shall also maintain a ~~file of rule-making notices~~
- 23 ~~published in the register~~ issues published during the
- 24 preceding ~~two (2)~~ years. ~~The~~ ~~secretary of state~~
- 25 ~~administrative code commissioner~~ SECRETARY OF STATE shall

1 also maintain a permanent ~~register of rule-making notices~~

2 ~~set of the registers.~~

3 ~~(6)~~ ~~(7)~~ The ~~secretary of state~~ ~~administrative code~~

4 ~~commissioner~~ SECRETARY OF STATE shall make copies of and

5 subscriptions to the code, and supplements or revisions

6 thereto and the register available to any person at prices

7 fixed to cover publication and mailing costs.

8 ~~(7)~~ ~~(8)~~ The ~~secretary of state~~ ~~administrative code~~

9 ~~commissioner~~ SECRETARY OF STATE shall determine the cost of

10 supplying copies of the code, and supplements or revisions

11 thereto and the register. Such cost shall be the approximate

12 cost of printing or duplicating and mailing. However, a

13 uniform price per page or group of pages may be established

14 without regard to differences in cost of printing different

15 parts of the code, and supplements or revisions thereto and

16 the register.

17 (9) THE SECRETARY OF STATE SHALL PUBLISH ALL NOTICES,

18 RULES, AND INTERPRETATIONS FILED WITH HIM, AT LEAST ONCE A

19 MONTH OR AS DIRECTED BY THE ADMINISTRATIVE CODE COMMITTEE,

20 IN A PUBLICATION CALLED THE MONTANA ADMINISTRATIVE CODE

21 REGISTER. HE SHALL SEND THE REGISTER WITHOUT CHARGE TO EACH

22 PERSON LISTED IN 82-4206(5) AND TO EACH MEMBER OF THE

23 LEGISLATURE REQUESTING THE SAME. HE SHALL SEND THE REGISTER

24 TO ANY OTHER PERSON WHO PAYS A SUBSCRIPTION FEE WHICH HE

25 SHALL FIX IN CONSULTATION WITH THE ADMINISTRATIVE CODE

1 COMMITTEE.

2 (10) THE SECRETARY OF STATE SHALL DEPOSIT ALL FEES HE
 3 COLLECTS IN THE GENERAL FUND.

4 (11) THE SECRETARY OF STATE MAY CHARGE AGENCIES A
 5 FILING FEE FOR ALL MATERIAL TO BE PUBLISHED IN THE CODE OR
 6 REGISTER BASED ON AN ESTIMATED COST OF PRINTING, WHICH HE
 7 SHALL FIX IN CONSULTATION WITH THE ADMINISTRATIVE CODE
 8 COMMITTEE.

9 ~~(8) All fees collected by the secretary of state shall~~
 10 ~~be deposited to the general fund."~~

11 Section 12. Section 82-4207, R.C.M. 1947, is amended
 12 to read as follows:

13 "82-4207. Petition for adoption of rules. An
 14 interested person or, when the legislature is not in
 15 session, a member of the legislature on behalf of an
 16 interested person may petition an agency requesting the
 17 promulgation, amendment, or repeal of a rule. Each agency
 18 shall prescribe by rule the form for petitions and the
 19 procedure for their submission, consideration, and
 20 disposition. Within ~~sixty~~ (60) days after submission of a
 21 petition, the agency either shall deny the petition in
 22 writing (stating its reasons for the denial) or shall
 23 initiate rule-making proceedings in accordance with ~~section~~
 24 82-4204."

25 Section 13. Section 82-4208, R.C.M. 1947, is amended

1 to read as follows:

2 "82-4208. Judicial notice of rules. The courts shall
 3 take judicial notice of any rule filed and published under
 4 the provisions of this ~~act~~ part."

5 Section 14. Section 82-4212, R.C.M. 1947, is amended
 6 to read as follows:

7 "82-4212. Examination of evidence by agency —
 8 proposed orders. When in a contested case a majority of the
 9 officials of the agency who are to render the final decision
 10 have not heard the case or read the record, the decision, if
 11 adverse to a party to the proceeding other than the agency
 12 itself, ~~shall~~ may not be made until a proposal for decision
 13 is served upon the parties and an opportunity is afforded to
 14 each party adversely affected to file exceptions and present
 15 briefs and oral argument to the officials who are to render
 16 the decision. The proposal for decision shall contain a
 17 statement of the reasons therefor and of each issue of fact
 18 or law necessary to the proposed decision, prepared by the
 19 person who conducted the hearing ~~or one who has read the~~
 20 ~~record unless he becomes unavailable to the agency. If the~~
 21 person who conducted the hearing becomes unavailable to the
 22 agency, proposed findings of fact may be prepared by a
 23 person who has read the record only if the demeanor of
 24 witnesses is considered immaterial by all parties. The
 25 parties may waive compliance with this section by written

1 stipulation."

2 Section 15. Section 82-4213, R.C.M. 1947, is amended
3 to read as follows:

4 "82-4213. Final orders -- notification. (1) A final
5 decision or order adverse to a party in a contested case
6 shall be in writing or stated in the record. A final
7 decision shall include findings of fact and conclusions of
8 law, separately stated. Findings of fact, if set forth in
9 statutory language, shall be accompanied by a concise and
10 explicit statement of the underlying facts supporting the
11 findings. If, in accordance with agency rules, a party
12 submitted proposed findings of fact, the decision shall
13 include a ruling upon each proposed finding. Parties shall
14 be notified either personally or by mail of any decision or
15 order. Upon request, a copy of the decision or order shall
16 be delivered or mailed forthwith to each party and to his
17 attorney of record. Each conclusion of law shall be
18 supported by authority or by a reasoned opinion.

19 (2) Each agency shall index and make available for
20 public inspection all final decisions and orders, including
21 declaratory rulings under ~~section 18 [82-4218], issued after~~
22 ~~the effective date of this act.~~ No such agency decision or
23 order ~~shall be~~ is valid or effective against any person or
24 party, nor may it be invoked by the agency for any purpose,
25 until it has been made available for public inspection as

1 herein required. This provision is not applicable in favor
2 of any person or party who has actual knowledge thereof or
3 when a state statute or federal statute or regulation
4 prohibits public disclosure of the contents of a decision or
5 order."

6 Section 16. Section 82-4215, R.C.M. 1947, is amended
7 to read as follows:

8 "82-4215. Licenses. (1) When the grant, denial,
9 renewal, revocation, suspension, annulment, withdrawal,
10 limitation, TRANSFER, or amendment of a license is required
11 by law to be preceded by notice and opportunity for hearing,
12 the provisions of this ~~act~~ part concerning contested cases
13 apply.

14 (2) When a licensee has made timely and sufficient
15 application for the renewal of a license or a new license
16 with reference to any activity of a continuing nature, the
17 existing license does not expire until the application has
18 been finally determined by the agency, and, in case the
19 application is denied or the terms of the new license
20 limited, until the last day for seeking review of the agency
21 order or a later date fixed by order of the reviewing court.

22 (3) No revocation, suspension, annulment, withdrawal,
23 or amendment of any license is lawful unless, prior to the
24 institution of agency proceedings, the agency gave notice by
25 mail to the licensee of facts or conduct which warrant the

1 intended action, and the licensee was given an opportunity
 2 to show compliance with all lawful requirements for the
 3 retention of the license. If the agency finds that public
 4 health, safety, or welfare imperatively requires emergency
 5 action, and incorporates a finding to that effect in its
 6 order, summary suspension of a license may be ordered
 7 pending proceedings for revocation or other action. These
 8 proceedings shall be promptly instituted and determined."

9 Section 17. Section 82-4216, B.C.H. 1947, is amended
 10 to read as follows:

11 "82-4216. Judicial review of contested cases. (1) (a)
 12 A person who has exhausted all administrative remedies
 13 available within the agency and who is aggrieved by a final
 14 decision in a contested case is entitled to judicial review
 15 under this act part. This section does not limit utilization
 16 of or the scope of judicial review available under other
 17 means of review, redress, relief, or trial de novo provided
 18 by statute. A preliminary, procedural, or intermediate
 19 agency action or ruling is immediately reviewable if review
 20 of the final agency decision would not provide an adequate
 21 remedy.

22 (b) A party who proceeds before an agency under the
 23 terms of a particular statute shall not be precluded from
 24 questioning the validity of that statute on judicial review,
 25 but such party may not raise any other question not raised

1 before the agency, unless it is shown to the satisfaction of
 2 the court that there was good cause for failure to raise the
 3 question before the agency.

4 (2) (a) Proceedings for review shall be instituted by
 5 filing a petition in district court within ~~thirty~~ (30) days
 6 after service of the final decision of the agency, or if a
 7 rehearing is requested, within ~~thirty~~ (30) days after the
 8 decision thereon. Except as otherwise provided by statute,
 9 the petition shall be filed in the district court for the
 10 county where the petitioner resides or has his principal
 11 place of business, or where the agency maintains its
 12 principal office. Copies of the petition shall be promptly
 13 served upon the agency and all parties of record.

14 (b) The petition shall include a concise statement of
 15 the facts upon which jurisdiction and venue are based, a
 16 statement of the manner in which the petitioner is
 17 aggrieved, and the ground or grounds specified in subsection
 18 (7) of this section upon which the petitioner contends he is
 19 entitled to relief. The petition shall demand the relief to
 20 which the petitioner believes he is entitled, and the demand
 21 for relief may be in the alternative.

22 (3) Unless otherwise provided by statute, the filing
 23 of the petition shall not stay enforcement of the agency's
 24 decision. The agency may grant, or the reviewing court may
 25 order, a stay upon terms which it ~~deems~~ considers proper.

1 (4) Within ~~thirty~~ (30) days after the service of the
 2 petition, or within further time allowed by the court, the
 3 agency shall transmit to the reviewing court the original or
 4 a certified copy of the entire record of the proceeding
 5 under review. By stipulation of all parties to the review
 6 proceedings, the record may be shortened. A party
 7 unreasonably refusing to stipulate to limit the record may
 8 be taxed by the court for the additional costs. The court
 9 may require or permit subsequent corrections or additions to
 10 the record.

11 (5) If, before the date set for hearing, application
 12 is made to the court for leave to present additional
 13 evidence, and it is shown to the satisfaction of the court
 14 that the additional evidence is material and that there were
 15 good reasons for failure to present it in the proceeding
 16 before the agency, the court may order that the additional
 17 evidence be taken before the agency upon conditions
 18 determined by the court. The agency may modify its findings
 19 and decision by reason of the additional evidence and shall
 20 file that evidence and any modifications, new findings, or
 21 decisions with the reviewing court.

22 (6) The review shall be conducted by the court without
 23 a jury and shall be confined to the record. In cases of
 24 alleged irregularities in procedure before the agency, not
 25 shown in the record, proof thereof may be taken in the

1 court. The court, upon request, shall hear oral argument and
 2 receive written briefs.

3 (7) The court shall ~~may~~ not substitute its judgment
 4 for that of the agency as to the weight of the evidence on
 5 questions of fact. The court may affirm the decision of the
 6 agency or remand the case for further proceedings. The court
 7 may reverse or modify the decision if substantial rights of
 8 the appellant have been prejudiced because the
 9 administrative findings, inferences, conclusions, or
 10 decisions are:

11 (a) in violation of constitutional or statutory
 12 provisions;

13 (b) in excess of the statutory authority of the
 14 agency;

15 (c) made upon unlawful procedure;

16 (d) affected by other error of law;

17 (e) clearly erroneous in view of the reliable,
 18 probative, and substantial evidence on the whole record;

19 (f) arbitrary or capricious or characterized by abuse
 20 of discretion or clearly unwarranted exercise of discretion;

21 or

22 (g) because findings of fact, upon issues essential to
 23 the decision, were not made although requested."

24 Section 18. Section 82-4217, B.C.H. 1947, is amended
 25 to read as follows:

1 "82-4217. Appeals. An aggrieved party may obtain
 2 review of a final judgment of a district court under this
 3 ~~act part~~ by appeal to the supreme court within ~~sixty~~ (60)
 4 days after entry of judgment. Such appeal shall be taken in
 5 the manner provided by law for appeals from district courts
 6 in civil cases. Unless otherwise provided by statute or
 7 unless the agency has granted a stay through the completion
 8 of the judicial review process;

9 (1) ~~If~~ if appeal is taken from a judgment of the
 10 district court affirming an agency decision, the agency
 11 decision shall not be stayed except upon order of the
 12 supreme court; except that, in cases where a stay is in
 13 effect at the time of the filing of notice of appeal, the
 14 stay shall be continued by operation of law for ~~twenty~~ (20)
 15 days from the date of filing of the notice;

16 (2) ~~If~~ if appeal is taken from a judgment of the
 17 district court reversing or modifying an agency decision,
 18 the agency decision shall be stayed pending final
 19 determination of the appeal unless the supreme court orders
 20 otherwise."

21 Section 19. Section 82-4220, R.C.M. 1947, is amended
 22 to read as follows:

23 "82-4220. Subpoenas and enforcement -- compelling
 24 testimony. (1) An agency conducting any proceeding subject
 25 to this ~~act part~~ shall have the power to require the

1 furnishing of such information, the attendance of such
 2 witnesses, and the production of such books, records,
 3 papers, documents, and other objects as may be necessary and
 4 proper for the purposes of the proceeding. In furtherance of
 5 this power, an agency upon its own motion may, and upon
 6 request of any party appearing in a contested case shall,
 7 issue subpoenas for witnesses or subpoenas duces tecum. The
 8 method for service of subpoenas, witness fees, and mileage
 9 shall be the same as required in civil actions in the
 10 district courts of the state. Except as otherwise provided
 11 by statute, witness fees and mileage shall be paid by the
 12 party at whose request the subpoena was issued.

13 (2) In case of disobedience of any subpoena issued and
 14 served under this section or of the refusal of any witness
 15 to testify as to any material matter with regard to which he
 16 may be interrogated in a proceeding before the agency, the
 17 agency may apply to any district court in the state for an
 18 order to compel compliance with the subpoena or the giving
 19 of testimony. If the agency fails or refuses to seek
 20 enforcement of a subpoena issued at the request of a party
 21 or to compel the giving of testimony ~~deemed~~ considered
 22 material by a party, the party may make such application.
 23 The court shall hear the matter as expeditiously as
 24 possible. If the disobedience or refusal is found to be
 25 unjustified, the court shall enter an order requiring

1 compliance. Disobedience of such order shall be punishable
 2 by contempt of court in the same manner and by the same
 3 procedures as is provided for like conduct committed in the
 4 course of civil actions in district courts. If another
 5 method of subpoena enforcement or compelling testimony is
 6 provided by statute, it may be used as an alternative to the
 7 method provided for in this section.

8 (3) Each agency shall provide in its rules of practice
 9 for discovery prior to a contested case hearing, unless the
 10 applicable statute provides for a trial de novo on appeal to
 11 the district court."

12 Section 20. Section 82-4221, R.C.M. 1947, is amended
 13 to read as follows:

14 "82-4221. Representation. Any person compelled to
 15 appear in person or who voluntarily appears before any
 16 agency or representative thereof shall be accorded the right
 17 to be accompanied, represented, and advised by counsel. In a
 18 proceeding before an agency, every party shall be accorded
 19 the right to appear in person or by or with counsel but this
 20 ~~act part~~ shall not be construed as requiring an agency to
 21 furnish counsel to any such person."

22 Section 21. Section 82-4222, R.C.M. 1947, is amended
 23 to read as follows:

24 "82-4222. Service. Except where a statute expressly
 25 provides to the contrary, service in all agency proceedings

1 subject to the provisions of this ~~act part~~ and in
 2 proceedings for judicial review thereof, shall be as
 3 prescribed for civil actions in the district courts."

4 Section 22. Section 82-4223, R.C.M. 1947, is amended
 5 to read as follows:

6 "82-4223. Construction and effect. Nothing in this ~~act~~
 7 part shall be ~~deemed~~ considered to limit or repeal
 8 requirements imposed by statute or otherwise recognized law.
 9 No subsequent legislation shall be ~~deemed~~ considered to
 10 supersede or modify any provision of this ~~act part~~, whether
 11 by implication or otherwise, except to the extent that such
 12 legislation shall do so expressly."

13 Section 23. Section 82-4227, R.C.M. 1947, is amended
 14 to read as follows:

15 "82-4227. Definitions. As used in this ~~act~~ chapter:

16 (1) "Agency agency" means any board, bureau,
 17 commission, department, authority, or officer of the state
 18 or local government authorized by law to make rules,
 19 determine contested cases, or enter into contracts except:

20 (a) the legislature and any branch, committee, or
 21 officer thereof;

22 (b) the judicial branches and any committee or officer
 23 thereof;

24 (c) the governor, except that an agency is not exempt
 25 because the governor has been designated as a member

1 thereof; or

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

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

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

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

16 ~~(c) intra-agency interagency memoranda.~~

17 (3) "agency action" means the whole or a part of an
18 agency rule, license, order, or contract or the equivalent
19 or denial thereof."

20 Section 24. Section 82-4228, R.C.M. 1947, is amended
21 to read as follows:

22 "82-4228. Agency requirements. (1) Each agency shall
23 develop procedures for permitting and encouraging the public
24 to participate in agency decisions that are of significant
25 interest to the public. The procedures shall assure

1 adequate notice and assist public participation before a
2 final ~~decision is made on the adoption of a rule or policy,~~
3 ~~awarding a contract, granting or denying a permit, license~~
4 ~~or change of rate~~ agency action is taken that is of
5 significant interest to the public.

6 (2) An agency shall be ~~deemed~~ considered to have
7 complied with the notice provisions of this ~~act~~ section if:

8 (a) an environmental impact statement is prepared and
9 distributed as required by the Montana Environmental Policy
10 Act, Title 69, chapter 65;

11 (b) a proceeding is held as required by the Montana
12 Administrative Procedure Act, ~~Title 82, chapter 42;~~

13 (c) a public hearing, after appropriate notice is
14 given, is held pursuant to any other provision of state law
15 or a local ordinance or resolution; or

16 (d) a newspaper of general circulation within the area
17 to be affected by a decision of significant interest to the
18 public has carried a news story or advertisement concerning
19 the decision prior to a final decision on a matter.

20 (3) Procedures for assisting public participation
21 shall include a method of affording interested persons
22 reasonable opportunity to submit data, views, or arguments,
23 orally or in written form, prior to making a final decision
24 that is of significant interest to the public.

25 (4) The provisions of this ~~act~~ section do not apply

1 to:

2 (a) an agency decision that must be made to deal with

3 an emergency situation affecting the public health, welfare,

4 or safety;

5 (b) an agency decision that must be made to maintain

6 or protect the interests of the agency, including but not

7 limited to the filing of a lawsuit in a court of law or

8 becoming a party to an administrative proceeding; or

9 (c) a decision involving no more than a ministerial

10 act.

11 (5) Each agency shall adopt guidelines for its

12 programs, which guidelines shall provide policies and

13 procedures to facilitate public participation in those

14 programs, consistent with subsection (1) of this section.

15 These guidelines shall be adopted as rules and published in

16 a manner which may be provided to a member of the public

17 upon request."

18 Section 25. Section 82-4229, R.C.M. 1947, is amended

19 to read as follows:

20 "82-4229. Enforcement. The district courts of the

21 state have jurisdiction to set aside an agency decision

22 under ~~this act 82-4228~~ upon petition of any person whose

23 rights have been prejudiced, made within ~~thirty~~ (30) days of

24 the date of the decision."

25 Section 26. Section 82A-107, R.C.M. 1947, is amended

1 to read as follows:

2 "82A-107. Duties and powers of department heads.

3 (1) Except as otherwise provided by law, each department

4 head shall:

5 (a) ~~Supervise~~ supervise, direct, account for,

6 organize, plan, administer, and execute the functions vested

7 in the department by this title or other law;

8 (b) ~~Establish~~ establish the policy to be followed by

9 the department and employees;

10 (c) ~~Compile~~ compile and submit reports and budgets for

11 the department as required by law or requested by the

12 governor;

13 (d) ~~Provide~~ provide the governor with any information

14 that he requests at any time on the operation of the

15 department;

16 (e) ~~Represent~~ represent the department in

17 communications with the governor;

18 (f) ~~Prescribe~~ prescribe rules, consistent with law and

19 rules established by the governor, for the administration of

20 the department; the conduct of the employees; the

21 distribution and performance of business; and the custody,

22 use, and preservation of the records, documents, and

23 property pertaining to department business. The lieutenant

24 governor, secretary of state, attorney general, auditor, and

25 superintendent of public instruction may prescribe their own

1 rules for their departments or offices, and the governor may
 2 not prescribe rules for them. The rules described in this
 3 subsection are limited to statements concerning only the
 4 internal management of the agency and not affecting private
 5 rights or procedures available to the public. This section
 6 does not authorize the adoption of any rule as rules are
 7 defined in the Montana Administrative Procedure Act.

8 (g) ~~Subject~~ subject to the approval of the governor,
 9 establish the internal organizational structure of the
 10 department, and allocate the functions of the department to
 11 units to promote the economic and efficient administration
 12 and operation of the department. The internal structure of
 13 the department shall be established in accordance with
 14 ~~section~~ 82A-104(2).

15 (h) ~~Subject~~ subject to law, and the state merit
 16 system, if applicable, establish and make appointments to
 17 necessary subordinate positions, and abolish unnecessary
 18 positions.

19 (i) ~~Maintain~~ maintain a central office in Helena for
 20 the department, and such other facilities throughout the
 21 state as may be required for the effective and efficient
 22 operation of the department.

23 (2) Except as otherwise provided by law, each
 24 department head may:

25 (a) ~~Subject~~ subject to law, and the state merit

1 system, if applicable, transfer employees between positions,
 2 remove persons appointed to positions, and change the
 3 duties, titles, and compensation of employees within the
 4 department.

5 (b) ~~Delegate~~ delegate any of the functions vested in
 6 the department head to subordinate employees.

7 (c) ~~Apply~~ apply for, accept, administer, and expend
 8 funds, grants, gifts, and loans from the federal government
 9 or any other source in administering the department's
 10 functions.

11 (d) ~~Enter~~ enter into agreements with federal, state,
 12 and local agencies necessary to carry out the department's
 13 functions."

14 Section 27. There is a new R.C.M. section that reads
 15 as follows:

16 Transition schedule — public education rules. Rules
 17 and policies of the board of public education and the state
 18 superintendent of public instruction are subject to
 19 82-4204(3) on and after October 1, 1977. Any such rules and
 20 policies in effect on January 1, 1977, may be filed before
 21 October 1, 1977, for publication in the administrative code
 22 without being subject to the notice and hearing requirements
 23 of 82-4204(1).

24 Section 28. There is a new R.C.M. section that reads
 25 as follows:

1 Transition schedule -- administration rules. Rules and
 2 policies of the department of administration not exempted
 3 from the Montana Administrative Procedure Act are subject to
 4 82-4204(3) on and after October 1, 1977. The director of
 5 administration shall discontinue publication of the Montana
 6 administrative manual after that date but may continue the
 7 second and third volumes of that manual under the title of
 8 Statewide Budgeting and Accounting Manual. The director may
 9 file any rules published in the first volume of the Montana
 10 administrative manual as of January 1, 1977, with the
 11 ~~administrative code commission~~ SECRETARY OF STATE before
 12 October 1, 1977, without being subject to the notice and
 13 hearing requirements of 82-4204(1). The ~~administrative code~~
 14 ~~commission~~ SECRETARY OF STATE shall arrange with the
 15 director of administration for publication of the rules of
 16 the department of administration in a volume separable from
 17 the administrative rules of Montana for the convenience of
 18 state offices which do not wish to acquire the entire code.

19 Section 29. There is a new B.C.M. section that reads
 20 as follows:

21 Transition schedule -- institutions rules. Rules and
 22 policies of the department of institutions relating to
 23 patients or inmates in a mental, medical, or eleemosynary
 24 institution are subject to 82-4204(3) on and after October
 25 30, 1977. Any such rules in effect on January 1, 1977, may

1 be filed before October 1, 1977, for publication in the
 2 administrative code without being subject to the notice and
 3 hearing requirements of 82-4204(1).

-End-

HOUSE BILL NO. 77

INTRODUCED BY BARRETT, LORY, SCULLY, VINCENT,
BY REQUEST OF THE ADMINISTRATIVE CODE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE;
AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213,
82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227
THROUGH 82-4229, AND 82A-107, R.C.M. 1947."

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

Section 1. Section 82-4201, R.C.M. 1947, is amended to
read as follows:

"82-4201. Short title. This act ~~part~~ sections 82-4201
through 82-4225 shall be known and may be cited as the
"Montana Administrative Procedure Act."

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

"82-4202. Definitions. For purposes of this act ~~part~~,
the following definitions apply:

(1) "Agency" means any ~~board, bureau, commission,
department, authority or officer~~ agency, as defined in
82-4227, of the state government ~~authorized by law to make
rules and to determine contested cases,~~ except that the
provisions of this act ~~part~~ shall do 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) (a) the state board of pardons, except that said
the board shall be subject to the requirements of ~~section 3~~
[82-4203] and 5 [82-4205] of this act and its rules shall be
published in the Montana administrative code and register;~~

~~(f) (b) the supervision and administration of any
penal, mental, medical or eleemosynary institution with
regard to the admission, release, institutional supervision,
custody, control, care, or treatment of inmates, YOUTHS OR
prisoners or patients;~~

~~(g) (c) the administration and management of
educational institutions; the board of regents and the
Montana university system;~~

~~(h) (d) the financing, construction, and maintenance of
public works.~~

There are no changes in HB 77, and due to length will not
be rerun. Please refer to yellow copy for complete text.

1 (2) "Rule" means each agency regulation, standard, or
 2 statement of general applicability that implements,
 3 interprets, or prescribes law or policy or describes the
 4 organization, procedures, or practice requirements of an
 5 agency. Substantive rules are either legislative rules,
 6 which if adopted in accordance with this part and under
 7 expressly delegated authority have the force of law and when
 8 not so adopted are invalid, or adjective or interpretive
 9 rules, which may be adopted in accordance with this part and
 10 under express or implied authority to codify an
 11 interpretation of a statute although such interpretation
 12 lacks the force of law. The term includes the amendment or
 13 repeal of a prior rule, but does not include:

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

17 (b) declaratory rulings issued pursuant to ~~section 18~~
 18 ~~[82-4218] of this act;~~

19 ~~(c) intra-agency memoranda;~~

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

24 ~~(e) (d)~~ seasonal rules adopted annually relating to
 25 hunting, fishing, and trapping when there is a statutory

1 requirement for the publication of such rules, and rules
 2 adopted annually relating to the seasonal recreational use
 3 of lands and waters owned or controlled by the state when
 4 the substance of such rules is indicated to the public by
 5 means of signs or signals;

6 ~~(f) (e)~~ rules relating to personnel standards, job
 7 classifications or salary ranges for agency employees;
 8 implementing the state personnel classification plan, the
 9 state wage and salary plan, or the state wide budgeting and
 10 accounting system;

11 ~~(g) (f)~~ uniform rules adopted pursuant to interstate
 12 compact, except that such rules shall be filed in accordance
 13 with ~~section 10 [82-4210] of this act~~ 82-4205 and shall be
 14 published in the Montana administrative code and register.

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

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

24 (5) "Licensing" includes any agency process respecting
 25 the grant, denial, renewal, revocation, suspension,