

Senate Bill BILL NO. 37

INTRODUCED BY Turnage - Koskie
By request of Administrative Code Committee

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947."

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

Section 1. Short title. Sections 2 through 4 may be cited as the "Legislative History Act".

Section 2. Statement of policy. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

Section 3. Delegation of authority defined. As used in section 4, "delegation of authority" means a statutory authorization to:

- (1) adopt rules implementing a statute; or
- (2) license (as defined in 82-4202) an activity or establishment regulated by statute.

Section 4. Bills containing delegations of authority to state agencies -- limitations. (1) A bill introduced in a regular or special session of the legislature which contains a delegation of authority to a state agency shall be referred to an appropriate standing committee. The committee or a minority of the committee may not file a favorable report on the bill or on the bill as amended unless the report includes a statement, published in the journal with the report, which indicates the specific purpose for which authority is to be delegated and the committee members' intention as to how this authority will be exercised. If the authority delegated includes the power to adopt rules, the statement shall include an outline or summary of the rules to be adopted. A bill delegating authority to a state agency which is not accompanied by the statement may not be removed from the committee.

(2) A bill subject to this section, reported from a committee in the other house than that of its introduction or from a regular joint conference committee, may be supported by a committee statement which incorporates by reference in whole or part the statement of another committee which considered the bill. A bill subject to this

1 section reported from a free joint conference committee
 2 shall be accompanied by a statement from the joint committee
 3 which complies with subsection (1).

4 (3) So much of a statute as is enacted in
 5 contravention of this section, as indicated by the journals,
 6 is void.

7 Section 5. Section 82-4219, R.C.M. 1947, is amended to
 8 read as follows:

9 "82-4219. Declaratory judgments on validity or
 10 application of rules. ~~The--validity-or-application-of-a A~~
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 13 rule or its threatened application, interferes with or
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 17 rule was adopted with an arbitrary or capricious disregard
 18 for the purpose of the authorizing statute, as evidenced by
 19 documented legislative intent. If the administrative code
 20 committee has objected to the adoption or amendment of a
 21 rule on the grounds set forth in the preceding sentence, the
 22 agency bears the burden, in any action brought under this
 23 section, of proving that its rule was not adopted with an
 24 arbitrary or capricious disregard for the purpose of the
 25 authorizing statute. The action may be brought in the

1 district court for the county in which the plaintiff resides
 2 or has his principal place of business, or in which the
 3 agency maintains its principal office. The agency shall be
 4 made a party to the action. A declaratory judgment may be
 5 rendered whether or not the plaintiff has requested the
 6 agency to pass upon the validity or applicability of the
 7 rule in question."

-End-

Approved by Committee
on Judiciary

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3 BY REQUEST OF ADMINISTRATIVE CODE COMMITTEE

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STATEMENT OF INTENT RE: SB 37

The committee recommends passage of this bill with amendments to delete references to journal publication of committee statements of intent and to make optional the outlining of administrative rules in a committee statement of intent. The purposes of this bill are adequately set forth in pages 9-11 of the report of the Administrative Code Committee and are incorporated by reference in this statement. In rebuttal to points made in opposition to the bill by several executive branch attorneys, the committee declares that this bill does not create a new body of law and does not merely restate principles already applied by the courts. There are two sources a judge can rely on when construing a statute: Intrinsic sources (those within a statute itself or indicated by the journal history of a statute), and extrinsic sources (such as interim committee reports on proposed legislation and interpretations of similar legislation in other states). Montana judges have traditionally relied upon intrinsic sources only, e.g., the "four corners of the statute itself," to determine our legislative intent. This bill would make a few extrinsic sources available. A judge could disregard these committee statements if he wishes, but agencies would have to heed them carefully.

SENATOR JEAN A. TURNAGE, Chairman

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SENATOR JEAN A. TURNAGE, Chairman

HOUSE OF REPRESENTATIVES

March 25, 1977

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 37

1. Amend page 1, section 2, line 20.
Following: "agencies"
Strike: "are accompanied by"
Insert: "contain"
2. Amend page 2, section 4, subsection (1), lines 8 through 10.
Following: "shall"
Strike: lines 8 through 10 in their entirety
3. Amend page 2, section 4, subsection (1), lines 13 and 14.
Following: "report"
Strike: "APPEND A STATEMENT TO THE COMMITTEE REPORT"
Insert: "begin with a preamble"
4. Amend page 2, section 4, subsection (1), line 15.
Following: "the"
Strike: "committee members'"
Insert: "sponsor's"
5. Amend page 2, section 4, subsection (1), line 18.
Following: "the"
Strike: "statement"
Insert: "preamble"
6. Amend page 2, section 4, subsection (1), line 20.
Following: "which"
Strike: "is not accompanied by the statement"
Insert: "does not contain such a preamble"
7. Amend page 2, section 4, subsection (1), line 21.
Following: "from"
Strike: "the"
Insert: "a"
8. Amend page 2, section 4, subsection (2), lines 22 through
line 6 on page 3.
Following: line 21
Strike: subsection (2) in its entirety
Insert: "(2) Unless an act contains a preamble in accordance with
subsection (1), and delegation of authority in the act is
void."
9. Amend page 3, section 5, lines 21 and 22.
Following: "statute"
Strike: ", as evidenced by documented legislative intent"

AS AMENDED CONCURRED IN

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 7 ~~SHALL BE PUBLISHED IN THE SAME MANNER AS THE JOURNAL.~~
 8 (2) UNLESS AN ACT CONTAINS A PREAMBLE IN ACCORDANCE WITH
 9 SUBSECTION (1), ANY DELEGATION OF AUTHORITY IN THE ACT IS
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REFERENCE BILL: Includes Free Joint
 Conference Committee Report
 Dated 4-18-99

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