

1 *Senate* BILL NO. *620*
 2 INTRODUCED BY *Stony*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 SUSPENSION OF AN ADMINISTRATIVE RULE DURING THE INTERIM
 6 BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL MEMBERS
 7 OF THE LEGISLATURE; AMENDING SECTION 82-4205, R.C.M. 1947."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 82-4205, R.C.M. 1947, is amended to
 11 read as follows:

12 "82-4205. Filing of rules — effective date of rules.

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

19 (2) Each agency shall file with the secretary of state
 20 a certified copy of each rule adopted by it subsequent to
 21 the effective date of this act. Each rule shall become
 22 effective ~~ten~~ {10} days after publication in the Montana
 23 administrative register or code as provided in ~~section 6~~
 24 [82-4206] of this act, except that:

25 (a) ~~if~~ if a later date is required by statute or

1 specified in the rule, the later date shall be the effective
 2 date;

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

14 (c) if the legislature is not in session and 10 or
 15 more members of the legislature object in writing to the
 16 secretary of state to the adoption or amendment of a rule or
 17 emergency rule, the effective date of the rule or emergency
 18 rule is 30 days following the receipt of the 10th such
 19 objection by the secretary of state. Within this 30-day
 20 period, the secretary of state shall poll all members of the
 21 legislature by mail, in the manner provided under 43-322 but
 22 using first class mail, as to whether the rule shall be
 23 suspended until the next regular session of the legislature
 24 or shall take effect immediately. If a majority of ballots
 25 returned from each house of the legislature favor

1 suspension, the effective date of the rule is January 30 of
2 the next odd-numbered year.

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."

-End-

STATE OF MONTANA

REQUEST NO. 318-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 1, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 120 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 to provide for the suspension of an administrative rule during the interim between legislative sessions by mail ballot of all members of the legislature.

ASSUMPTIONS:

1. All rules published would be affected.
2. Agencies would continue to adopt or amend about the same number of rules each year.
3. The Secretary of State would have to poll the legislature several times each year.
4. Pages of the code would have to be reprinted due to polling the members of the legislature.
5. All subscribers would be notified after each poll.
6. No increase in staff would be necessary.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Additional cost of proposed legislation	<u>\$2,553</u>	<u>\$2,934</u>	<u>\$5,487</u>

Richard L. Drury
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-7-77

Approved by Committee
on State Administration

1 SENATE BILL NO. 120
2 INTRODUCED BY STORY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5 SUSPENSION OF AN ADMINISTRATIVE RULE DURING THE INTERIM
6 BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL MEMBERS
7 OF THE LEGISLATURE; AMENDING SECTION ~~82-4205~~ 82-4207, R.C.M.
8 1947."

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

11 Refer to Introduced Bill

12 (Strike everything after the enacting clause and insert:)

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

15 "82-4207. Petition for adoption of rules. An
16 interested person or, when the legislature is not in
17 session, a member of the legislature on behalf of an
18 interested person may petition an agency requesting the
19 promulgation, amendment or repeal of a rule. If an agency
20 receives 10 or more petitions from members of the
21 legislature while it is not in session objecting to the
22 adoption or amendment of a rule the agency shall notify the
23 secretary of state. The secretary of state shall poll all
24 members of the legislature by mail within 30 days. The poll
25 shall be conducted in the manner provided under ~~43-322~~ but

1 using first class mail, as to whether the amendment or
2 adoption of the rule should remain in effect or if the
3 effective date on the rule should be amended to be the last
4 day of the next regular session of the legislature. The
5 majority of ballots from each house of the legislature
6 returned to the secretary of state within 14 days after the
7 poll is mailed will determine the result. If the poll is on
8 an emergency rule and the result of the poll is against the
9 emergency rule it shall be void. Each agency shall prescribe
10 by rule the form for petitions. Whenever an interested
11 person not represented by a legislator petitions an agency,
12 the agency shall prescribe by rule and the procedure for
13 their submission, consideration and disposition. Within
14 sixty (60) days after submission of a petition by an
15 interested person not represented by a legislator, the
16 agency either shall deny the petition in writing (stating
17 its reasons for the denial) or shall initiate rule-making
18 proceedings in accordance with section 82-4204."

-End-

1 SENATE BILL NO. 120
 2 INTRODUCED BY STORY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 SUSPENSION OF AN ADMINISTRATIVE RULE DURING THE INTERIM
 6 BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL MEMBERS
 7 OF THE LEGISLATURE; AMENDING SECTION 82-4205 ~~82-4207~~, R.C.M.
 8 1947."

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 14 read as follows:

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 16 interested person or, when the legislature is not in
 17 session, a member of the legislature on behalf of an
 18 interested person may petition an agency requesting the
 19 promulgation, amendment or repeal of a rule. ~~If an agency~~
 20 ~~receives 10 or more petitions from members of the~~
 21 ~~legislature while it is not in session objecting to the~~
 22 ~~adoption or amendment of a rule the agency shall notify the~~
 23 ~~secretary of state. The secretary of state shall poll all~~
 24 ~~members of the legislature by mail within 30 days. The poll~~
 25 ~~shall be conducted in the manner provided under 43-322 but~~

1 ~~using first class mail, as to whether the amendment or~~
 2 ~~adoption of the rule should remain in effect or if the~~
 3 ~~effective date on the rule should be amended to be the last~~
 4 ~~day of the next regular session of the legislature. The~~
 5 ~~majority of ballots from each house of the legislature~~
 6 ~~returned to the secretary of state within 14 days after the~~
 7 ~~poll is mailed will determine the result. If the poll is on~~
 8 ~~an emergency rule and the result of the poll is against the~~
 9 ~~emergency rule it shall be void. Each agency shall prescribe~~
 10 ~~by rule the form for petitions. Whenever an interested~~
 11 ~~person not represented by a legislator petitions an agency,~~
 12 ~~the agency shall prescribe by rule and the procedure for~~
 13 ~~their submission, consideration and disposition. Within~~
 14 ~~sixty (60) days after submission of a petition by an~~
 15 ~~interested person not represented by a legislator, the~~
 16 ~~agency either shall deny the petition in writing (stating~~
 17 ~~its reasons for the denial) or shall initiate rule-making~~
 18 ~~proceedings in accordance with section 82-4204."~~

-End-

THIRD READING

March 29, 1977

HOUSE COMMITTEE ON STATE ADMINISTRATION AMENDMENTS TO SENATE BILL No. 120

1. Amend title, line 5.

Following: line 4

Strike: "SUSPENSION"

Insert: "APPROVAL"

2. Amend title, line 7.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "82-4205"

Strike: "82-4207"

Insert: "82-4203.5 AND 82-4205"

3. Amend the bill, pages 1 through 2.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

"82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules referred to it under ~~section~~ 82-4204 and may:

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

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

(c) request that rule-making hearing be held in accordance with the provision of ~~section~~ 82-4204; ~~or~~

(d) if the legislature is not in session, poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature, provided that the poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Administrative Procedure Act or the repeal, amendment or adoption of a rule as provided in ~~section~~ 82-4203.1."

Section 2. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"82-4205. Filing of rules--effective date of rules. (1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

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

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

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

HOUSE COMMITTEE ON STATE ADMINISTRATION AMENDMENTS TO SENATE BILL No. 120

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

(4) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 82-4203.5, the results of the poll shall be published with the rule, and shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity."

AS AMENDED
BE CONCURRED IN

HOUSE OF REPRESENTATIVES

March 30, 1977

COMMITTEE OF THE WHOLE amendments to HOUSE COMMITTEE ON STATE ADMINISTRATION amendments to SENATE BILL NO. 120, as follows:

1. Amend amendment no. 3, insertion paragraph, section 1, subsection (c).
Following: ";"
Strike: "or"

2. Amend amendment no. 3, insertion paragraph, section 1, subsection (d).
Following: "legislature"
Strike: "."
Insert: "; or"

3. Amend amendment no. 3, insertion paragraph, section 1.
Following: subsection (d)
Insert: "(e) should 20 or more legislators object to any rule, the committee shall poll the members of the legislature under subsection (d)."

AS AMENDED BE CONCURRED IN

1 SENATE BILL NO. 120
 2 INTRODUCED BY STORY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 SUSPENSION APPROVAL OF AN ADMINISTRATIVE RULE DURING THE
 6 INTERIM BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL
 7 MEMBERS OF THE LEGISLATURE; AMENDING SECTION SECTIONS
 8 82-4205 ~~82-4207~~ 82-4203.5 AND 82-4205, R.C.M. 1947."

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

11 Refer to Third Reading Bill

12 (Strike everything after the enacting clause and insert:)

13 Section 1. Section 82-4203.5, R.C.M. 1947, is amended
14 to read as follows:

15 "82-4203.5. Powers of the committee. (1) The committee
16 shall review all proposed rules referred to it under section
17 82-4204 and may:

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

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

1 (c) request that a rule-making hearing be held in
 2 accordance with the provision of section 82-4204; ~~or~~
 3 ~~(d) if the legislature is not in session, poll all~~
 4 ~~members of the legislature by mail to determine whether a~~
 5 ~~proposed rule is consistent with the intent of the~~
 6 ~~legislature, provided that the poll shall include an~~
 7 ~~opportunity for the agency to present a written~~
 8 ~~justification for the rule to the members of the~~
 9 ~~legislature; OR~~

10 ~~(E) SHOULD 20 OR MORE LEGISLATORS OBJECT TO ANY RULE,~~
 11 ~~THE COMMITTEE SHALL POLL THE MEMBERS OF THE LEGISLATURE~~
 12 ~~UNDER SUBSECTION (D).~~

13 (2) The committee shall prepare a report to the
 14 legislature at least once each biennium and may recommend
 15 amendments to the Administrative Procedure Act or the
 16 repeal, amendment or adoption of a rule as provided in
 17 section 82-4203.1."

18 Section 2. Section 82-4205, R.C.M. 1947, is amended to
19 read as follows:

20 "82-4205. Filing of rules--effective date of rules.
 21 (1) On or before the 60th day following the effective date
 22 of this act, each agency shall file with the secretary of
 23 state a certified copy of each rule adopted by it on or
 24 before the effective date of this act and remaining in
 25 effect. Any rule not so filed shall be deemed to have been

1 abrogated by the agency and shall be void and of no effect.

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

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

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

22 (3) The secretary of state may prescribe a format,
23 style and arrangement for rules which are filed pursuant to
24 this act and may refuse to accept the filing of any rule
25 that is not in substantial compliance therewith. He shall

1 keep and maintain a permanent register of all rules filed
2 (including superseded and repealed rules), which shall be
3 open to public inspection, and shall provide copies of any
4 rule upon request of any person or agency. Unless otherwise
5 provided by statute, the secretary of state may require the
6 payment of the cost of providing such copies.

7 (4) In the event that the administrative code
8 committee has conducted a poll of the legislature in
9 accordance with 82-4203.5, the results of the poll shall be
10 published with the rule, and shall be admissible in any
11 court proceeding involving the validity of the rule. In the
12 event that the poll determines that a majority of the
13 members of both houses find the proposed rule is contrary to
14 the intent of the legislature, the rule shall be
15 conclusively presumed to be contrary to the legislative
16 intent in any court proceeding involving its validity."

-End-