

CHAPTER NO. 268.

HOUSE BILL NO. 85

INTRODUCED BY HUENNEKENS, TURNAGE, FABREGA, VINCENT

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE HOUSE

January 8, 1979	Introduced and referred to Committee on Taxation.
January 15, 1979	On motion by chief sponsor, Senator Turnage added as cosponsor. Committee recommend bill do pass. Report adopted.
January 16, 1979	Printed and placed on members' desks.
January 17, 1979	Second reading, do pass as amended.
January 18, 1979	Correctly engrossed. On motion taken from engrossing and referred to second reading. Second reading, do pass as amended.
January 19, 1979	Correctly engrossed.
January 20, 1979	On motion rules suspended and bill placed on third reading this day.
January 22, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Taxation.
March 8, 1979	Committee recommend bill be concurred in. Report adopted.

March 10, 1979

Second reading, concurred in.

March 14, 1979

Third reading, concurred in.

IN THE HOUSE

March 15, 1979

Returned from second house.
Concurred in. Sent to
enrolling.

Reported correctly enrolled.

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 2 INTRODUCED BY Humboldt Falls Vincent
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4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A REVENUE
 6 OVERSIGHT COMMITTEE AND TO PRESCRIBE ITS FUNCTIONS; AMENDING
 7 SECTIONS 2-4-402 AND 2-4-306, MCA; AND PROVIDING AN
 8 IMMEDIATE EFFECTIVE DATE."

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

11 NEW SECTION. Section 1. Definitions. In [sections 1
 12 through 10 of this act] "committee" means the revenue
 13 oversight committee created in [section 2].

14 NEW SECTION. Section 2. Revenue oversight committee
 15 -- appointment and composition. (1) There is a revenue
 16 oversight committee.

17 (2) The committee consists of:

18 (a) four members of the senate taxation committee
 19 appointed by the chairman of that committee;

20 (b) four members of the house of representatives
 21 taxation committee appointed by the chairman of that
 22 committee;

23 (c) two senators appointed by the committee on
 24 committees; and

25 (d) two representatives appointed by the speaker of

1 the house.

2 (3) No more than three members from each house may be
 3 of the same political party.

4 (4) Members must be appointed before the 90th
 5 legislative day of a regular session.

6 NEW SECTION. Section 3. Term of office. Appointments
 7 to the committee are for 2 years. A member of the committee
 8 serves until his term of office as a legislator is ended or
 9 his successor is appointed, whichever occurs first.

10 NEW SECTION. Section 4. Vacancies. (1) A vacancy
 11 occurring during a legislative session must be filled in the
 12 same manner as the original appointment.

13 (2) A vacancy occurring when the legislature is not in
 14 session must be filled by the selection of a member of the
 15 appropriate house and political party by the remaining
 16 members of the committee.

17 (3) An appointment to the committee under this section
 18 is for the unexpired term of the original member.

19 NEW SECTION. Section 5. Officers. The committee shall
 20 elect one of its members as chairman and may elect other
 21 officers it considers necessary.

22 NEW SECTION. Section 6. Meetings and compensation.
 23 (1) The committee shall meet as often as may be necessary
 24 during and between legislative sessions.

25 (2) Committee members are entitled to receive

1 compensation and expenses as provided in 5-2-302.

2 **NEW SECTION.** Section 7. Powers and duties of the
3 committee -- duty to review revenue rules -- legislative
4 oversight of the department of revenue -- committee reports.

5 (1) The committee shall review all proposed rules of the
6 department of revenue filed with the secretary of state.

7 (2) The committee may:

8 (a) prepare written recommendations for the adoption,
9 amendment, or rejection of a rule and submit the
10 recommendations to the department of revenue whenever a
11 rulemaking hearing will not be held in accordance with the
12 provisions of 2-4-302 through 2-4-305;

13 (b) prepare recommendations for the adoption,
14 amendment, or rejection of a rule and submit oral or written
15 testimony at a rulemaking hearing;

16 (c) require that a rulemaking hearing be held in
17 accordance with the provisions of 2-4-302 through 2-4-305;

18 (d) recommend to the legislature the repeal,
19 amendment, or adoption of a rule as provided in 2-4-412.

20 (3) The committee shall exercise legislative oversight
21 of the department of revenue, including without limitation
22 the review of:

23 (a) proposed budgets;

24 (b) proposed legislation;

25 (c) pending litigation; and

1 (d) major contracts and personnel actions of the
2 department.

3 (4) The committee may investigate and issue reports on
4 any matter concerning taxation or the department of revenue.

5 **NEW SECTION.** Section 8. Biennial critique. The
6 committee shall prepare a biennial critique of the
7 department of revenue's activities that the department shall
8 publish as an appendix to the biennial report of the
9 department.

10 **NEW SECTION.** Section 9. Legislative intent -- poll.
11 (1) If the legislature is not in session, the committee may
12 poll the members of the legislature by mail to determine
13 whether a proposed rule of the department of revenue is
14 consistent with the intent of the legislature.

15 (2) If 20 or more legislators object in writing to any
16 rule of the department of revenue, the committee shall poll
17 the members of the legislature.

18 (3) The poll shall include an opportunity for the
19 department of revenue to present a written justification for
20 the rule to the members of the legislature.

21 **NEW SECTION.** Section 10. Evidentiary value of
22 legislative poll. (1) The results of a poll conducted by the
23 committee are admissible in a court proceeding involving the
24 validity of a rule.

25 (2) If the results of the poll show that the majority

1 of the members of both houses find a rule contrary to the
2 intent of the legislature, the rule shall be conclusively
3 presumed to be contrary to the legislative intent in a court
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5 Section 11. Section 2-4-402, MCA, is amended to read:

6 "2-4-402. Powers of the committee -- duty to review
7 rules. (1) The committee shall review all proposed rules
8 filed with the secretary of state.

9 ~~(2) Rules proposed by the department of revenue may be~~
10 ~~reviewed only in regard to the procedural requirements of~~
11 ~~the Montana Administrative Procedure Act.~~

12 (2)(1) The committee may:

13 (a) prepare written recommendations for the adoption,
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15 recommendations to the department proposing the rule when a
16 rulemaking hearing will not be held in accordance with the
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22 accordance with the provision of 2-4-302 through 2-4-305."

23 Section 12. Section 2-4-306, MCA, is amended to read:

24 "2-4-306. Filing, format, and effective date --
25 dissemination of emergency rules. (1) Each agency shall file

1 with the secretary of state a copy of each rule adopted by
2 it.

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

13 (3) In the event that the administrative code
14 committee has conducted a poll of the legislature in
15 accordance with 2-4-403 or the revenue oversight committee
16 has conducted a poll in accordance with [section 9], the
17 results of the poll shall be published with the rule.

18 (4) Each rule shall become effective after publication
19 in the register as provided in 2-4-312, except that:

20 (a) if a later date is required by statute or
21 specified in the rule, the later date shall be the effective
22 date;

23 (b) subject to applicable constitutional or statutory
24 provisions, an emergency rule shall become effective
25 immediately upon filing with the secretary of state or at a

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1 stated date following publication in the register if the
2 agency finds that this effective date is necessary because
3 of imminent peril to the public health, safety, or welfare.
4 The agency's finding and a brief statement of reasons
5 therefor shall be filed with the rule. The agency shall take
6 appropriate measures to make emergency rules known to every
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8 Section 13. Effective date. This act is effective on
9 its passage and approval.

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STATE OF MONTANA

REQUEST NO. 110-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 30, 19 79, there is hereby submitted a Fiscal Note for House Bill 85 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:

HB 85 creates a Revenue Oversight Committee on a permanent basis. It is closely modelled after the present committee but clarifies and mitigates some jurisdictional conflicts with regard to the Administrative Code Committee.

ASSUMPTIONS:

1. There will be no changes in the rate of legislative pay or expense reimbursement.
2. The committee will meet 9 times in FY80 and 6 times in FY81.
3. One meeting in each fiscal year would be 2 days long - the rest, one day.
4. No staff support would be in the budget.

FISCAL IMPACT:

Total FY 80 expenditures would be \$21,832 from the General Fund.
Total FY 81 expenditures would be \$13,520 from the General Fund.

TECHNICAL NOTES:

HB 85 assigns no agency responsibility for the above costs. The bill also contains no provisions for staff support. If Legislative Council staff is to provide support as in the previous biennium, this should be specified. There should also be an indication as to whether the support is to be provided under authority of the Committee on Priorities or in addition to it. Budgeting should anticipate full-time staffing and half-time secretarial support.

Richard L. Trempfer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/30/79

Approved by Committee
on Taxation

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 22 (3) An appointment to the committee under this section
 23 is for the unexpired term of the original member.
 24 NEW SECTION. Section 5. Officers. The committee shall
 25 elect one of its members as chairman and may elect other

1 officers it considers necessary.

2 NEW_SECTION Section 6. Meetings and compensation.

3 (1). The committee shall meet as often as may be necessary
4 during and between legislative sessions.

5 (2) Committee members are entitled to receive
6 compensation and expenses as provided in 5-2-302.

7 NEW_SECTION Section 7. Powers and duties of the
8 committee -- duty to review revenue rules -- legislative
9 oversight of the department of revenue -- committee reports.

10 (1) The committee shall review all proposed rules of the
11 department of revenue filed with the secretary of state.

12 (2) The committee may:

13 (a) prepare written recommendations for the adoption,
14 amendment, or rejection of a rule and submit the
15 recommendations to the department of revenue whenever a
16 rulemaking hearing will not be held in accordance with the
17 provisions of 2-4-302 through 2-4-305;

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

21 (c) require that a rulemaking hearing be held in
22 accordance with the provisions of 2-4-302 through 2-4-305;

23 (d) recommend to the legislature the repeal,
24 amendment, or adoption of a rule as provided in 2-4-412.

25 (3) The committee shall exercise legislative oversight

1 of the department of revenue, including without limitation
2 the review of:

3 (a) proposed budgets;

4 (b) proposed legislation;

5 (c) pending litigations; and

6 (d) major contracts and personnel actions of the
7 department.

8 (4) The committee may investigate and issue reports on
9 any matter concerning taxation or the department of revenue.

10 NEW_SECTION Section 8. Biennial critique. The
11 committee shall prepare a biennial critique of the
12 department of revenue's activities that the department shall
13 publish as an appendix to the biennial report of the
14 department.

15 NEW_SECTION Section 9. Legislative intent -- poll.

16 (1) If the legislature is not in session, the committee may
17 poll the members of the legislature by mail to determine
18 whether a proposed rule of the department of revenue is
19 consistent with the intent of the legislature.

20 (2) If 20 or more legislators object in writing to any
21 rule of the department of revenue, the committee shall poll
22 the members of the legislature.

23 (3) The poll shall include an opportunity for the
24 department of revenue to present a written justification for
25 the rule to the members of the legislature.

1 NEW SECTION. Section 10. Evidentiary value of
 2 legislative poll. (1) The results of a poll conducted by the
 3 committee are admissible in a court proceeding involving the
 4 validity of a rule.

5 (2) If the results of the poll show that the majority
 6 of the members of both houses find a rule contrary to the
 7 intent of the legislature, the rule shall be conclusively
 8 presumed to be contrary to the legislative intent in a court
 9 proceeding involving its validity.

10 Section 11. Section 2-4-402, MCA, is amended to read:

11 "2-4-402. Powers of the committee -- duty to review
 12 rules. (1) The committee shall review all proposed rules
 13 filed with the secretary of state.

14 (2) Rules proposed by the department of revenue may be
 15 reviewed only in regard to the procedural requirements of
 16 the Montana Administrative Procedure Act.

17 ~~(2)(3)~~ The committee 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 rulemaking hearing will not be held in accordance with the
 22 provisions of 2-4-302 through 2-4-305;

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

1 (c) require that a rulemaking hearing be held in
 2 accordance with the provision of 2-4-302 through 2-4-305."

3 Section 12. Section 2-4-306, MCA, is amended to read:

4 "2-4-306. Filing, format, and effective date --
 5 dissemination of emergency rules. (1) Each agency shall file
 6 with the secretary of state a copy of each rule adopted by
 7 it.

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

18 (3) In the event that the administrative code
 19 committee has conducted a poll of the legislature in
 20 accordance with 2-4-403, or the revenue oversight committee
 21 has conducted a poll in accordance with (section 9), the
 22 results of the poll shall be published with the rule.

23 (4) Each rule shall become effective after publication
 24 in the register as provided in 2-4-312, except that:

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

13 Section 13. Effective date. This act is effective on
14 its passage and approval.

-End-

1 HOUSE BILL NO. 85
 2 INTRODUCED BY HUENNEKENS, TURNAGE, FABREGA, VINCENT
 3 BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A REVENUE
 6 OVERSIGHT COMMITTEE AND TO PRESCRIBE ITS FUNCTIONS; AMENDING
 7 SECTIONS 2-4-402 AND 2-4-306, MCA; AND PROVIDING AN
 8 IMMEDIATE EFFECTIVE DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 NEW SECTION. Section 1. Definitions. In [sections 1
 12 through 10 of this act] "committee" means the revenue
 13 oversight committee created in [section 2].
 14 NEW SECTION. Section 2. Revenue oversight committee
 15 -- appointment and composition. (1) There is a revenue
 16 oversight committee.
 17 (2) The committee consists of:
 18 (a) four SIX members of the senate taxation-committees
 19 ~~AND appointed-by-the-chairman-of-that-committee AND--AND--BY~~
 20 ~~THE--COMMITTEE--ON--COMMITTEES+~~ APPOINTED BY THE COMMITTEE ON
 21 COMMITTEES IN CONSULTATION WITH THE CHAIRMAN OF THE SENATE
 22 TAXATION COMMITTEE AND THE MINORITY LEADER OF THE SENATE;
 23 (b) four SIX members of the house of representatives
 24 taxation-committees ~~AND appointed-by-the-chairman-of-that~~
 25 ~~committee AND-TWO-BY-THE-SPEAKER-OF-THE-HOUSE+~~ APPOINTED BY

1 THE SPEAKER IN CONSULTATION WITH THE CHAIRMAN OF THE HOUSE
 2 TAXATION COMMITTEE AND THE MINORITY LEADER OF THE HOUSE.
 3 ~~(c) two senators appointed by the committee on~~
 4 ~~committees and~~
 5 ~~(d) two representatives appointed by the speaker of~~
 6 ~~the house.~~
 7 (3) No more than three members from each house may be
 8 of the same political party.
 9 (4) Members must be appointed before the 90th
 10 legislative day of a regular session.
 11 NEW SECTION. Section 3. Term of office. Appointments
 12 to the committee are for 2 years. A member of the committee
 13 serves until his term of office as a legislator is ended or
 14 his successor is appointed, whichever occurs first.
 15 NEW SECTION. Section 4. Vacancies. (1) A vacancy
 16 occurring during a legislative session must be filled in the
 17 same manner as the original appointment.
 18 (2) A vacancy occurring when the legislature is not in
 19 session must be filled by the selection of a member of the
 20 appropriate house and political party by the remaining
 21 members of the committee.
 22 (3) An appointment to the committee under this section
 23 is for the unexpired term of the original member.
 24 NEW SECTION. Section 5. Officers. The committee shall
 25 elect one of its members as chairman and may elect other

1 officers it considers necessary.

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