

HOUSE BILL NO. 74

INTRODUCED BY HARPER

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on State Administration.
January 14, 1981	Committee recommend bill do pass as amended. Report adopted.
January 15, 1981	Bill printed and placed on members' desks.
January 16, 1981	Second reading, pass consideration. To be considered January 17, 1981.
January 17, 1981	Second reading, pass consideration. To be considered January 19, 1981.
	Referred to Committee on State Administration.
January 28, 1981	Committee recommend bill do pass as amended. Report adopted.
January 29, 1981	Bill printed and placed on members' desks.
January 30, 1981	Second reading, do pass.
January 31, 1981	Correctly engrossed.
February 2, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 3, 1981	Introduced and referred to Committee on State Administration.
March 13, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1981	Second reading, concurred in.
March 18, 1981	Third reading, concurred in as amended. Ayes, 47; Noes, 1.

IN THE HOUSE

March 19, 1981	Returned from Senate with amendments.
April 7, 1981	Second reading, amendments concurred in. On motion, rules suspended and bill placed on third reading this day. Third reading, amendments concurred in. Ayes, 92; Noes, 2. Sent to enrolling. Reported correctly enrolled.

1 HOUSE SILL NO. 74
 2 INTRODUCED BY HARPER
 3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO
 7 REQUIRE THE REPORTING OF JUDICIAL CASES TO THE
 8 ADMINISTRATIVE CODE COMMITTEE; AND TO PROVIDE FOR
 9 ENFORCEMENT OF AGENCY DUTIES BY THE COMMITTEE; AMENDING
 10 SECTIONS 2-4-302, 2-4-305, 2-4-314, 2-4-402, AND 2-4-412,
 11 MCA."

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

14 Section 1. Section 2-4-302, MCA, is amended to read:
 15 "2-4-302. Notice, hearing, and submission of views.

16 (1) Prior to the adoption, amendment, or repeal of any rule,
 17 the agency shall give written notice of its intended action.
 18 The notice shall include a statement of either the terms or
 19 substance of the intended action or a description of the
 20 subjects and issues involved, the rationale for the intended
 21 action, and the time when, place where, and manner in which
 22 interested persons may present their views thereon.

23 (2) The notice shall be filed with the secretary of
 24 state for publication in the register as provided in 2-4-312
 25 and mailed within 3 days of filing to persons who have made

1 timely requests to the agency for advance notice of its
 2 rulemaking proceedings. The notice shall be published and
 3 mailed at least 30 days in advance of the agency's intended
 4 action.

5 (3) If any statute provides for a different method of
 6 publication, the affected agency shall comply with the
 7 statute in addition to the requirements contained herein.
 8 However, in no case may the notice period be less than 30
 9 days or more than 6 months.

10 (4) Prior to the adoption, amendment, or repeal of any
 11 rule, the agency shall afford interested persons at least 20
 12 days' notice of a hearing and 28 days from the day of notice
 13 to submit data, views, or arguments, orally or in writing.
 14 In the case of substantive rules, the notice of proposed
 15 rulemaking must state that opportunity for oral hearing
 16 shall be granted if requested by either 10% or 25, whichever
 17 is less, of the persons who will be directly affected by the
 18 proposed rule, by a governmental subdivision or agency, by
 19 the administrative code committee, or by an association
 20 having not less than 25 members who will be directly
 21 affected.

22 (5) An agency may continue a hearing date for cause.
 23 Contested As determined by the agency, contested case
 24 procedures need not be followed in hearings held pursuant to
 25 this section. If a hearing is otherwise required by statute,

1 nothing herein alters that requirement.

2 (6) If an agency fails to publish a notice of adoption
 3 within the time required by 2-4-305(7) and the agency again
 4 proposes the same rule for adoption, amendment, or repeal,
 5 the proposal must be considered a new proposal for purposes
 6 of compliance with this chapter.

7 (7) At the commencement of any hearing on the intended
 8 action, the person designated by the agency to preside at
 9 the hearing shall read aloud the "Notice of Function of
 10 Administrative Code Committee" appearing in the register."

11 Section 2. Section 2-4-305, MCA, is amended to read:
 12 "2-4-305. Requisites for validity -- authority and
 13 statement of reasons. (1) The agency shall consider fully
 14 written and oral submissions respecting the proposed rule.
 15 Upon adoption of a rule, an agency shall issue a concise
 16 statement of the principal reasons for and against its
 17 adoption, incorporating therein its reasons for overruling
 18 the considerations urged against its adoption. If
 19 substantial differences exist between the rule as proposed
 20 and as adopted, and the differences have not been described
 21 or set forth in the adopted rule as that rule is printed in
 22 the Montana administrative register, the differences must be
 23 described in the statement of reasons for and against agency
 24 action. When no written or oral submissions have been
 25 received, an agency may omit the statement of reasons.

1 (2) Rules may not unnecessarily repeat statutory
 2 language. Whenever it is necessary to refer to statutory
 3 language in order to convey the meaning of a rule
 4 interpreting the language, the reference shall clearly
 5 indicate that portion of the language which is statutory and
 6 the portion which is amplification of the language.

7 (3) Each proposed and adopted rule shall include a
 8 citation to the specific grant of rulemaking authority
 9 pursuant to which it or any part thereof is adopted. In
 10 addition, each proposed and adopted rule shall include a
 11 citation to the specific section or sections in the Montana
 12 Code Annotated which the rule purports to implement.

13 (4) Each rule proposed and adopted by an agency
 14 implementing a policy of a governing board or commission
 15 must include a citation to and description of the policy
 16 implemented. Each agency rule implementing a "policy", as
 17 used in the definition set forth in 2-4-102(10), and the
 18 policy itself must be based on legal authority and otherwise
 19 comply with the requisites for validity of rules established
 20 by this chapter.

21 ~~(4)~~(5) To be effective, each substantive rule adopted
 22 must be within the scope of authority conferred and in
 23 accordance with standards prescribed by other provisions of
 24 law.

25 ~~(5)~~(6) Whenever by the express or implied terms of any

1 statute a state agency has authority to adopt rules to
2 implement, interpret, make specific, or otherwise carry out
3 the provisions of the statute, no rule adopted is valid or
4 effective unless consistent and not in conflict with the
5 statute and reasonably necessary to effectuate the purpose
6 of the statute.

7 ~~(6)(7)~~ No rule is valid unless adopted in substantial
8 compliance with 2-4-302 or 2-4-303 and this section and
9 unless notice of adoption thereof is published within 6
10 months of the publishing of notice of the proposed rule. If
11 an amended or supplemental notice of either proposed or
12 final rulemaking or both is published concerning the same
13 rule, the 6-month limit must be determined with reference to
14 the latest notice in all cases."

15 Section 3. Section 2-4-314, MCA, is amended to read:

16 "2-4-314. Biennial review by agencies ~~---report~~. (1)
17 Each agency shall at least biennially review its rules to
18 determine if any new rule should be adopted or any existing
19 rule should be modified or repealed.

20 (2) Prior to October 1, 1980, and prior to October 1
21 of each even-numbered year thereafter, each agency shall
22 prepare and submit a report to the administrative code
23 committee, in tabular or other form, indicating the agency's
24 recommendations for legislation which will clarify existing
25 grants of rulemaking authority and grant or eliminate

1 rulemaking authority as necessary.

2 ~~(3) The committee may recommend to the legislature~~
3 ~~those modifications, additions, or deletions of agency~~
4 ~~rulemaking authority which the committee considers~~
5 ~~necessary."~~

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

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

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

13 (3) The committee may:

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

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

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

24 ~~(d) institute, intervene in, or otherwise participate~~
25 ~~in proceedings involving this chapter in the state and~~

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1 ~~federal courts and administrative agencies;~~
 2 ~~(e)(c) review the incidence and conduct of~~
 3 ~~administrative proceedings under this chapter."~~
 4 Section 5. Section 2-4-412, MCA, is amended to read:
 5 "2-4-412. Legislative review of rules ~~== effect of~~
 6 ~~failure to object.~~ (1) The legislature may, by joint
 7 resolution, repeal any rule in ARM. If a rule is repealed,
 8 the legislature shall in the joint resolution state its
 9 objections to the repealed rule. If an agency adopts a new
 10 rule to replace the repealed rule, the agency shall adopt
 11 the new rule in accordance with the objections stated by the
 12 legislature in the joint resolution. If the legislature does
 13 not repeal a rule filed with it before the adjournment of
 14 that regular session, the rule remains valid.
 15 (2) The legislature may also, by joint resolution,
 16 direct a change to be made in any rule in ARM or direct the
 17 adoption of an additional rule. If a change in any rule or
 18 the adoption of an additional rule is directed to be made,
 19 the legislature shall in the joint resolution state the
 20 nature of the change or the additional rule to be made and
 21 its reasons therefor. The agency shall, in the manner
 22 provided in the Montana Administrative Procedure Act, adopt
 23 a new rule in accordance with the legislative direction.
 24 (3) Rules made by agencies and changes in rules
 25 directed by the legislature under subsection (2) of this

1 section shall conform and be pursuant to statutory
 2 authority.
 3 ~~(4) Failure of the legislature or the administrative~~
 4 ~~code committee to object in any manner to the adoption,~~
 5 ~~amendment, or repeal of a rule is inadmissible in the courts~~
 6 ~~of this state to prove the validity of any rule."~~
 7 NEW SECTION. Section 6. Report of litigation --
 8 enforcement of agency duties. (1) Each agency shall report
 9 to the administrative code committee any judicial
 10 proceedings in which the construction or interpretation of
 11 any provision of this chapter is in issue and may report to
 12 the committee any proceeding in which the construction or
 13 interpretation of any rule of the agency is in issue. Upon
 14 request of the committee, copies of documents filed in any
 15 proceeding in which the construction or interpretation of
 16 either this chapter or an agency rule is in issue must be
 17 made available to the committee by the agency involved.
 18 (2) The committee may in all cases institute,
 19 intervene in, or otherwise participate in proceedings
 20 involving this chapter in the state and federal courts and
 21 before administrative agencies and may enforce any duty of
 22 an executive agency required by this chapter. The committee
 23 may use any legal or equitable remedy, except an action for
 24 damage, available to it, including but not limited to those
 25 remedies provided for in Title 27, chapters 19, 26, and 27.

1 (3) The committee has standing to bring an action
2 under subsection (2) of this section and may prove the same
3 by alleging that the action is brought under subsection (2)
4 and in the name of the committee.

5 Section 7. Codification instruction. Section 6 is
6 intended to be codified as an integral part of Title 2,
7 chapter 4, and the provisions of Title 2, chapter 4, apply
8 to section 6.

-End-

HB 74

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on State Administration

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2 under subsection (2) of this section and may prove the same
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5 Section 7. Codification instruction. Section 6 is
6 intended to be codified as an integral part of Title 2,
7 chapter 4, and the provisions of Title 2, chapter 4, apply
8 to section 6.

9 ~~SECTION 8. SEVERABILITY. IF A PART OF THIS ACT IS~~
10 ~~INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID~~
11 ~~PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN~~
12 ~~ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~
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14 ~~INVALID APPLICATIONS.~~

-End-

Approved by Committee
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 21 of each even-numbered year thereafter, each agency shall
 22 prepare and submit a report to the administrative code
 23 committee, in tabular or other form, indicating the agency's
 24 recommendations for legislation which will clarify existing
 25 grants of rulemaking authority and grant or eliminate

1 rulemaking authority as necessary.

2 ~~(3) The committee may recommend to the legislature~~
 3 ~~those modifications, additions, or deletions of agency~~
 4 ~~rulemaking authority which the committee considers~~
 5 ~~necessary."~~

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

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

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

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

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

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

24 ~~(d) institute, intervene in, or otherwise participate~~
 25 ~~in proceedings involving this chapter in the state and~~

1 ~~federal courts and administrative agencies;~~
 2 ~~(e)(c)~~ review the incidence and conduct of
 3 administrative proceedings under this chapter."
 4 Section 5. Section 2-4-412, MCA, is amended to read:
 5 "2-4-412. Legislative review of rules -- effect of
 6 failure to object. (1) The legislature may, by joint
 7 resolution, repeal any rule in ARM. If a rule is repealed,
 8 the legislature shall in the joint resolution state its
 9 objections to the repealed rule. If an agency adopts a new
 10 rule to replace the repealed rule, the agency shall adopt
 11 the new rule in accordance with the objections stated by the
 12 legislature in the joint resolution. If the legislature does
 13 not repeal a rule filed with it before the adjournment of
 14 that regular session, the rule remains valid.
 15 (2) The legislature may also, by joint resolution,
 16 direct a change to be made in any rule in ARM or direct the
 17 adoption of an additional rule. If a change in any rule or
 18 the adoption of an additional rule is directed to be made,
 19 the legislature shall in the joint resolution state the
 20 nature of the change or the additional rule to be made and
 21 its reasons therefor. The agency shall, in the manner
 22 provided in the Montana Administrative Procedure Act, adopt
 23 a new rule in accordance with the legislative direction.
 24 (3) Rules made by agencies and changes in rules
 25 directed by the legislature under subsection (2) of this

1 section shall conform and be pursuant to statutory
 2 authority.
 3 (4) Failure of the legislature or the administrative
 4 code committee to object in any manner to the adoption,
 5 amendment, or repeal of a rule is inadmissible in the courts
 6 of this state to prove the validity of any rule."
 7 NEW SECTION. Section 6. Report of litigation --
 8 enforcement of agency duties. (1) Each agency shall report
 9 to the administrative code committee any judicial
 10 proceedings in which the construction or interpretation of
 11 any provision of this chapter is in issue and may report to
 12 the committee any proceeding in which the construction or
 13 interpretation of any rule of the agency is in issue. Upon
 14 request of the committee, copies of documents filed in any
 15 proceeding in which the construction or interpretation of
 16 either this chapter or an agency rule is in issue must be
 17 made available to the committee by the agency involved.
 18 (2) The committee may in all cases institute,
 19 intervene in, or otherwise participate in proceedings
 20 involving this chapter in the state and federal courts and
 21 before administrative agencies and may enforce any duty of
 22 an executive agency required by this chapter. The committee
 23 may use any legal or equitable remedy, except an action for
 24 damage, available to it, including but not limited to those
 25 remedies provided for in Title 27, chapters 19, 26, and 27.

1 (3) The committee has standing to bring an action
2 under subsection (2) of this section and may prove the same
3 by alleging that the action is brought under subsection (2)
4 and in the name of the committee.

5 Section 7. Codification instruction. Section 6 is
6 intended to be codified as an integral part of Title 2,
7 chapter 4, and the provisions of Title 2, chapter 4, apply
8 to section 6.

9 SECTION 8. SEVERABILITY. IF A PART OF THIS ACT IS
10 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
11 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
12 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
13 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
14 INVALID APPLICATIONS.

-End-

1 HOUSE BILL NO. 74

2 INTRODUCED BY HARPER

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO
7 REQUIRE THE REPORTING OF JUDICIAL CASES TO THE
8 ADMINISTRATIVE CODE COMMITTEE; AND TO PROVIDE FOR
9 ENFORCEMENT OF AGENCY DUTIES BY THE COMMITTEE; AMENDING
10 SECTIONS 2-4-302, 2-4-305, 2-4-314, 2-4-402, AND 2-4-412,
11 MCA."

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

14 Section 1. Section 2-4-302, MCA, is amended to read:

15 "2-4-302. Notice, hearing, and submission of views.

16 (1) Prior to the adoption, amendment, or repeal of any rule,
17 the agency shall give written notice of its intended action.
18 The notice shall include a statement of either the terms or
19 substance of the intended action or a description of the
20 subjects and issues involved, the rationale for the intended
21 action, and the time when, place where, and manner in which
22 interested persons may present their views thereon.

23 (2) The notice shall be filed with the secretary of
24 state for publication in the register as provided in 2-4-312
25 and mailed within 3 days of filing PUBLICATION to persons

1 who have made timely requests to the agency for advance
2 notice of its rulemaking proceedings. The notice shall be
3 published and mailed at least 30 days in advance of the
4 agency's intended action.

5 (3) If any statute provides for a different method of
6 publication, the affected agency shall comply with the
7 statute in addition to the requirements contained herein.
8 However, in no case may the notice period be less than 30
9 days or more than 6 months.

10 (4) Prior to the adoption, amendment, or repeal of any
11 rule, the agency shall afford interested persons at least 20
12 days' notice of a hearing and 28 days from the day of notice
13 to submit data, views, or arguments, orally or in writing.
14 In the case of substantive rules, the notice of proposed
15 rulemaking must state that opportunity for oral hearing
16 shall be granted if requested by either 10% or 25, whichever
17 is less, of the persons who will be directly affected by the
18 proposed rule, by a governmental subdivision or agency, or
19 the administrative code committee, or by an association
20 having not less than 25 members who will be directly
21 affected.

22 (5) An agency may continue a hearing date for cause.
23 Contested As determined by the agency, contested case
24 procedures need not be followed in hearings held pursuant to
25 this section. If a hearing is otherwise required by statute,

1 nothing herein alters that requirement.

2 (6) If an agency fails to publish a notice of adoption
 3 within the time required by 2-4-305(7) and the agency again
 4 proposes the same rule for adoption, amendment, or repeal,
 5 the proposal must be considered a new proposal for purposes
 6 of compliance with this chapter.

7 (7) At the commencement of any hearing on the intended
 8 action, the person designated by the agency to preside at
 9 the hearing shall read aloud the "Notice of Function of
 10 Administrative Code Committee" appearing in the register."

11 Section 2. Section 2-4-305, MCA, is amended to read:

12 "2-4-305. Requisites for validity -- authority and
 13 statement of reasons. (1) The agency shall consider fully
 14 written and oral submissions respecting the proposed rule.
 15 Upon adoption of a rule, an agency shall issue a concise
 16 statement of the principal reasons for and against its
 17 adoption, incorporating therein its reasons for overruling
 18 the considerations urged against its adoption. If
 19 substantial differences exist between the rule as proposed
 20 and as adopted, and the differences have not been described
 21 or set forth in the adopted rule as that rule is printed in
 22 the Montana administrative register, the differences must be
 23 described in the statement of reasons for and against agency
 24 action. When no written or oral submissions have been
 25 received, an agency may omit the statement of reasons.

1 (2) Rules may not unnecessarily repeat statutory
 2 language, whenever it is necessary to refer to statutory
 3 language in order to convey the meaning of a rule
 4 interpreting the language, the reference shall clearly
 5 indicate that portion of the language which is statutory and
 6 the portion which is amplification of the language.

7 (3) Each proposed and adopted rule shall include a
 8 citation to the specific grant of rulemaking authority
 9 pursuant to which it or any part thereof is adopted. In
 10 addition, each proposed and adopted rule shall include a
 11 citation to the specific section or sections in the Montana
 12 Code Annotated which the rule purports to implement.

13 (4) Each rule proposed and adopted by an agency
 14 implementing a policy of a governing board or commission
 15 must include a citation to and description of the policy
 16 implemented. Each agency rule implementing a "policy", as
 17 used in the definition set forth in 2-4-102(10), and the
 18 policy itself must be based on legal authority and otherwise
 19 comply with the requisites for validity of rules established
 20 by this chapter.

21 ~~(4)~~(5) To be effective, each substantive rule adopted
 22 must be within the scope of authority conferred and in
 23 accordance with standards prescribed by other provisions of
 24 law.

25 ~~(5)~~(6) Whenever by the express or implied terms of any

1 statute a state agency has authority to adopt rules to
 2 implement, interpret, make specific, or otherwise carry out
 3 the provisions of the statute, no rule adopted is valid or
 4 effective unless consistent and not in conflict with the
 5 statute and reasonably necessary to effectuate the purpose
 6 of the statute.

7 ~~f6}~~(7) No rule is valid unless adopted in substantial
 8 compliance with 2-4-302 or 2-4-303 and this section and
 9 unless notice of adoption thereof is published within 6
 10 months of the publishing of notice of the proposed rule. If
 11 an amended or supplemental notice of either proposed or
 12 final rulemaking or both is published concerning the same
 13 rule, the 6-month limit must be determined with reference to
 14 the latest notice in all cases."

15 Section 3. Section 2-4-314, MCA, is amended to read:

16 "2-4-314. Biennial review by agencies ~~---~~report. (1)
 17 Each agency shall at least biennially review its rules to
 18 determine if any new rule should be adopted or any existing
 19 rule should be modified or repealed.

20 (2) Prior to October 1, 1980, and prior to October 1
 21 of each even-numbered year thereafter, each agency shall
 22 prepare and submit a report to the administrative code
 23 committee, in tabular or other form, indicating the agency's
 24 recommendations for legislation which will clarify existing
 25 grants of rulemaking authority and grant or eliminate

1 rulemaking authority as necessary.

2 (3) The committee may recommend to the legislature
 3 those modifications, additions, or deletions of agency
 4 rulemaking authority which the committee considers
 5 necessary."

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

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

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

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

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

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

24 ~~(d) institute, intervene in, or otherwise participate~~
 25 ~~in proceedings involving this chapter in the state and~~

1 ~~federal courts and administrative agencies;~~
 2 ~~(e)(c)~~ review the incidence and conduct of
 3 administrative proceedings under this chapter."

4 Section 5. Section 2-4-412, MCA, is amended to read:
 5 "2-4-412. Legislative review of rules -- effect of
 6 failure to object. (1) The legislature may, by joint
 7 resolution, repeal any rule in ARM. If a rule is repealed,
 8 the legislature shall in the joint resolution state its
 9 objections to the repealed rule. If an agency adopts a new
 10 rule to replace the repealed rule, the agency shall adopt
 11 the new rule in accordance with the objections stated by the
 12 legislature in the joint resolution. If the legislature does
 13 not repeal a rule filed with it before the adjournment of
 14 that regular session, the rule remains valid.

15 (2) The legislature may also, by joint resolution,
 16 direct a change to be made in any rule in ARM or direct the
 17 adoption of an additional rule. If a change in any rule or
 18 the adoption of an additional rule is directed to be made,
 19 the legislature shall in the joint resolution state the
 20 nature of the change or the additional rule to be made and
 21 its reasons therefor. The agency shall, in the manner
 22 provided in the Montana Administrative Procedure Act, adopt
 23 a new rule in accordance with the legislative direction.

24 (3) Rules made by agencies and changes in rules
 25 directed by the legislature under subsection (2) of this

1 section shall conform and be pursuant to statutory
 2 authority.

3 (4) Failure of the legislature or the administrative
 4 code committee to object in any manner to the adoption,
 5 amendment, or repeal of a rule is inadmissible in the courts
 6 of this state to prove the validity of any rule."

7 NEW SECTION. Section 6. Report of litigation --
 8 enforcement of agency duties. (1) Each agency shall report
 9 to the administrative code committee any judicial
 10 proceedings in which the construction or interpretation of
 11 any provision of this chapter is in issue and may report to
 12 the committee any proceeding in which the construction or
 13 interpretation of any rule of the agency is in issue. Upon
 14 request of the committee, copies of documents filed in any
 15 proceeding in which the construction or interpretation of
 16 either this chapter or an agency rule is in issue must be
 17 made available to the committee by the agency involved.

18 (2) The committee may in all cases institute,
 19 intervene in, or otherwise participate in proceedings
 20 involving this chapter in the state and federal courts and
 21 before administrative agencies and may enforce any duty of
 22 an executive agency required by this chapter. The committee
 23 may use any legal or equitable remedy, except an action for
 24 damage, available to it, including but not limited to those
 25 remedies provided for in Title 27, chapters 19, 26, and 27.

1 (3) The committee has standing to bring an action
2 under subsection (2) of this section and may prove the same
3 by alleging that the action is brought under subsection (2)
4 and in the name of the committee.

5 Section 7. Codification instruction. Section 6 is
6 intended to be codified as an integral part of Title 2,
7 chapter 4, and the provisions of Title 2, chapter 4, apply
8 to section 6.

9 SECTION 8. SEVERABILITY. IF A PART OF THIS ACT IS
10 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
11 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
12 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
13 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
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-End-

1 HOUSE BILL NO. 74

2 INTRODUCED BY HARPER

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO
7 REQUIRE THE REPORTING OF JUDICIAL CASES TO THE
8 ADMINISTRATIVE CODE COMMITTEE; ~~AND---TO---PROVIDE---FOR~~
9 ~~ENFORCEMENT---OF---AGENCY---DUTIES---BY---THE---COMMITTEE;~~ AMENDING
10 SECTIONS 2-4-302, 2-4-305, 2-4-314, 2-4-402, AND 2-4-412,
11 MCA."

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

14 Section 1. Section 2-4-302, MCA, is amended to read:

15 "2-4-302. Notice, hearing, and submission of views.

16 (1) Prior to the adoption, amendment, or repeal of any rule,
17 the agency shall give written notice of its intended action.
18 The notice shall include a statement of either the terms or
19 substance of the intended action or a description of the
20 subjects and issues involved, the rationale for the intended
21 action, and the time when, place where, and manner in which
22 interested persons may present their views thereon.

23 (2) The notice shall be filed with the secretary of
24 state for publication in the register as provided in 2-4-312
25 and mailed within 3 days of filing PUBLICATION to persons

1 who have made timely requests to the agency for advance
2 notice of its rulemaking proceedings. The notice shall be
3 published and mailed at least 30 days in advance of the
4 agency's intended action.

5 (3) If any statute provides for a different method of
6 publication, the affected agency shall comply with the
7 statute in addition to the requirements contained herein.
8 However, in no case may the notice period be less than 30
9 days or more than 5 months.

10 (4) Prior to the adoption, amendment, or repeal of any
11 rule, the agency shall afford interested persons at least 20
12 days' notice of a hearing and 28 days from the day of notice
13 to submit data, views, or arguments, orally or in writing.
14 In the case of substantive rules, the notice of proposed
15 rulemaking must state that opportunity for oral hearing
16 shall be granted if requested by either 10% or 25, whichever
17 is less, of the persons who will be directly affected by the
18 proposed rule, by a governmental subdivision or agency, by
19 the administrative code committee, or by an association
20 having not less than 25 members who will be directly
21 affected.

22 (5) An agency may continue a hearing date for cause.
23 ~~Contested As-determined-by~~ IN THE DISCRETION OF the agency,
24 contested case procedures need not be followed in hearings
25 held pursuant to this section. If a hearing is otherwise

1 required by statute, nothing herein alters that requirement.

2 (6) If an agency fails to publish a notice of adoption
 3 within the time required by 2-4-305(7) and the agency again
 4 proposes the same rule for adoption, amendment, or repeal,
 5 the proposal must be considered a new proposal for purposes
 6 of compliance with this chapter.

7 (7) At the commencement of any hearing on the intended
 8 action, the person designated by the agency to preside at
 9 the hearing shall read aloud the "Notice of Function of
 10 Administrative Code Committee" appearing in the register."

11 Section 2. Section 2-4-305, MCA, is amended to read:

12 "2-4-305. Requisites for validity -- authority and
 13 statement of reasons. (1) The agency shall consider fully
 14 written and oral submissions respecting the proposed rule.
 15 Upon adoption of a rule, an agency shall issue a concise
 16 statement of the principal reasons for and against its
 17 adoption, incorporating therein its reasons for overruling
 18 the considerations urged against its adoption. If
 19 substantial differences exist between the rule as proposed
 20 and as adopted, and the differences have not been described
 21 or set forth in the adopted rule as that rule is printed in
 22 the Montana administrative register, the differences must be
 23 described in the statement of reasons for and against agency
 24 action. When no written or oral submissions have been
 25 received, an agency may omit the statement of reasons.

1 (2) Rules may not unnecessarily repeat statutory
 2 language. Whenever it is necessary to refer to statutory
 3 language in order to convey the meaning of a rule
 4 interpreting the language, the reference shall clearly
 5 indicate that portion of the language which is statutory and
 6 the portion which is amplification of the language.

7 (3) Each proposed and adopted rule shall include a
 8 citation to the specific grant of rulemaking authority
 9 pursuant to which it or any part thereof is adopted. In
 10 addition, each proposed and adopted rule shall include a
 11 citation to the specific section or sections in the Montana
 12 Code Annotated which the rule purports to implement.

13 (4) Each rule proposed and adopted by an agency
 14 implementing a policy of a governing board or commission
 15 must include a citation to and description of the policy
 16 implemented. Each agency rule implementing a "policy", as
 17 used in the definition set forth in 2-4-102(10), and the
 18 policy itself must be based on legal authority and otherwise
 19 comply with the requisites for validity of rules established
 20 by this chapter.

21 (5) To be effective, each substantive rule adopted
 22 must be within the scope of authority conferred and in
 23 accordance with standards prescribed by other provisions of
 24 law.

25 (6) Whenever by the express or implied terms of any

1 statute a state agency has authority to adopt rules to
 2 implement, interpret, make specific, or otherwise carry out
 3 the provisions of the statute, no rule adopted is valid or
 4 effective unless consistent and not in conflict with the
 5 statute and reasonably necessary to effectuate the purpose
 6 of the statute.

7 ~~(6)~~(7) No rule is valid unless adopted in substantial
 8 compliance with 2-4-302 or 2-4-303 and this section and
 9 unless notice of adoption thereof is published within 6
 10 months of the publishing of notice of the proposed rule. If
 11 an amended or supplemental notice of either proposed or
 12 final rulemaking or both is published concerning the same
 13 rule, the 6-month limit must be determined with reference to
 14 the latest notice in all cases."

15 Section 3. Section 2-4-314, MCA, is amended to read:

16 "2-4-314. Biennial review by agencies -- report. (1)
 17 Each agency shall at least biennially review its rules to
 18 determine if any new rule should be adopted or any existing
 19 rule should be modified or repealed.

20 (2) Prior to October 1, 1980, and prior to October 1
 21 of each even-numbered year thereafter, each agency shall
 22 prepare and submit a report to the administrative code
 23 committee, in tabular or other form, indicating the agency's
 24 recommendations for legislation which will clarify existing
 25 grants of rulemaking authority and grant or eliminate

1 rulemaking authority as necessary.

2 ~~(2)~~ The committee may recommend to the legislature
 3 those modifications, additions, or deletions of agency
 4 rulemaking authority which the committee considers
 5 necessary."

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

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

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

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

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

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

24 ~~(d) institute, intervene in, or otherwise participate~~
 25 ~~in proceedings involving this chapter in the state and~~

1 ~~federal courts and administrative agencies;~~

2 (C) INSTITUTE, INTERVENE IN, OR OTHERWISE PARTICIPATE
3 IN PROCEEDINGS INVOLVING THIS CHAPTER IN THE STATE AND
4 FEDERAL COURTS AND ADMINISTRATIVE AGENCIES;

5 ~~(e)(1)(2)~~ review the incidence and conduct of
6 administrative proceedings under this chapter."

7 Section 5. Section 2-4-412, MCA, is amended to read:

8 "2-4-412. Legislative review of rules -- effect of
9 failure to object. (1) The legislature may, by joint
10 resolution, repeal any rule in ARM. If a rule is repealed,
11 the legislature shall in the joint resolution state its
12 objections to the repealed rule. If an agency adopts a new
13 rule to replace the repealed rule, the agency shall adopt
14 the new rule in accordance with the objections stated by the
15 legislature in the joint resolution. If the legislature does
16 not repeal a rule filed with it before the adjournment of
17 that regular session, the rule remains valid.

18 (2) The legislature may also, by joint resolution,
19 direct a change to be made in any rule in ARM or direct the
20 adoption of an additional rule. If a change in any rule or
21 the adoption of an additional rule is directed to be made,
22 the legislature shall in the joint resolution state the
23 nature of the change or the additional rule to be made and
24 its reasons therefor. The agency shall, in the manner
25 provided in the Montana Administrative Procedure Act, adopt

1 a new rule in accordance with the legislative direction.

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

6 (4) Failure of the legislature or the administrative
7 code committee to object in any manner to the adoption,
8 amendment, or repeal of a rule is inadmissible in the courts
9 of this state to prove the validity of any rule."

10 NEW SECTION. Section 6. Report of litigation --
11 enforcement--of--agency--duties. (1) Each agency shall report
12 to the administrative code committee any judicial
13 proceedings in which the construction or interpretation of
14 any provision of this chapter is in issue and may report to
15 the committee any proceeding in which the construction or
16 interpretation of any rule of the agency is in issue. Upon
17 request of the committee, copies of documents filed in any
18 proceeding in which the construction or interpretation of
19 either this chapter or an agency rule is in issue must be
20 made available to the committee by the agency involved.

21 ~~(2) The committee may in all cases institute,~~
22 ~~intervene in or otherwise participate in proceedings~~
23 ~~involving this chapter in the state and federal courts and~~
24 ~~before administrative agencies and may enforce any duty of~~
25 ~~an executive agency required by this chapter; the committee~~

1 may--use-any-legal-or-equitable-remedy-except-an-action-for
2 damages-avoidable-to-it,-including-but-not-limited-to--those
3 remedies--provided-for-in-Title-27,-chapters-19,-26,-and-27,
4 (3)--The-committee-has--standing--to--bring--an--action
5 under--subsection-(2)-of-this-section-and-may-prove-the-same
6 by-attesting-that-the-action-is-brought-under-subsection--(2)
7 and-in-the-name-of-the-committee.

8 Section 7. Codification instruction. Section 6 is
9 intended to be codified as an integral part of Title 2,
10 chapter 4, and the provisions of Title 2, chapter 4, apply
11 to section 6.

12 SECTION 8. SEVERABILITY. IF A PART OF THIS ACT IS
13 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
14 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
15 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
16 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
17 INVALID APPLICATIONS.

-End-

March 13, 1981

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 74 be amended as follows:

1. Title, lines 8 and 9.

Following: "COMMITTEE;"

Strike: "AND TO PROVIDE FOR ENFORCEMENT OF AGENCY DUTIES BY THE
COMMITTEE;"

2. Page 2, line 23.

Following: "~~Contested~~"

Strike: "As determined by"

Insert: "In the discretion of"

3. Page 6, lines 24 through page 7, line 1.

Following: "~~d~~"

Insert: "(c)" and the remainder of line 24, page 6, through page 7, line

4. Page 7, line 2.

Following: "~~e~~"

Strike: "(c)"

Insert: "(d)"

5. Page 8, lines 7 and 8.

Following: "litigation"

Strike: "--enforcement of agency duties. (1)"

Insert: "."

6. Page 8, lines 18 through page 9, line 4.

Following: line 17

Strike: line 18, page 8 through line 4, page 9 in its entirety