

House Bill 329

In The House

January 19, 1981	Introduced and referred to Committee on State Administration.
January 21, 1981	Fiscal note requested.
January 26, 1981	Fiscal note returned.
February 2, 1981	Committee recommend bill do pass.
February 3, 1981	Bill printed and placed on members' desks.
February 4, 1981	Second reading pass consideration.
February 5, 1981	Second reading pass consideration.
	Rereferred to Committee on State Administration.
February 11, 1981	Committee recommend bill do pass as amended.
February 12, 1981	Bill printed and placed on members' desks.
February 13, 1981	Second reading do pass as amended.
February 16, 1981	Correctly engrossed.
February 17, 1981	Third reading passed.

In The Senate

February 18, 1981	Introduced and referred to Committee on State Administration.
March 25, 1981	Committee recommend bill concurred as amended.
March 27, 1981	Second reading concurred.

March 30, 1981	Third reading concurred as amended.
In The House	
March 31, 1981	Returned from Senate concurred as amended.
April 8, 1981	Second reading amendment concurred.
April 9, 1981	Third reading amendment concurred.
	Sent to enrolling.
April 13, 1981	Correctly enrolled.
April 14, 1981	Signed by Speaker
In The Senate	
April 15, 1981	Signed by President
Governor's Office	
April 15, 1981	Delivered to Governor
April 20, 1981	Vetoed.

1 HOUSE BILL No. 329
 2 INTRODUCED BY Kanduch Sabit
 3 Hoop
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT
 6 REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS
 7 PUBLICATION BY THE SECRETARY OF STATE; AMENDING SECTION
 8 2-4-405, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 2-4-405, MCA, is amended to read:
 12 "2-4-405. Estimate of economic impact. (1) Upon
 13 request of the administrative code committee, an agency
 14 shall prepare a statement of the estimated economic impact
 15 of the adoption, amendment, or repeal of a rule as proposed.
 16 The statement must include an estimate of:
 17 (a) the cost to the state of administering and
 18 enforcing the rule;
 19 (b) the aggregate cost of compliance to all persons
 20 affected; and
 21 (c) any economic benefit of compliance to all persons
 22 affected.
 23 ~~(2)--The statement must be filed with the secretary--of~~
 24 ~~state--for publication in the register and mailed to persons~~
 25 ~~who have requested advance notice of the agency's rulemaking~~

1 ~~proceedings--The statement must be published and--mailed--at~~
 2 ~~least 20 days prior to the adoption, amendment, or repeal of~~
 3 ~~the rule. If a hearing is held, it must be published 20 days~~
 4 ~~prior to the hearing.~~
 5 ~~(3)(2) If it is impossible to formulate such an~~
 6 ~~estimate, the agency shall file with the administrative code~~
 7 ~~committee and the secretary of state a statement explaining~~
 8 ~~the reasons for impossibility of formulation must--be~~
 9 ~~published instead of the estimate.~~
 10 ~~(3) Within 20 days after receiving the statement from~~
 11 ~~the agency, the administrative code committee shall file~~
 12 ~~with the secretary of state a statement that:~~
 13 ~~(a) approves its adequacy;~~
 14 ~~(b) objects to its adequacy; or~~
 15 ~~(c) disagrees with the agency on the question of~~
 16 ~~whether it is impossible to formulate such an estimate.~~
 17 ~~(4) If the administrative code committee and the~~
 18 ~~agency agree on a revised statement to replace a statement~~
 19 ~~objected to by the administrative code committee, it shall~~
 20 ~~be filed with the secretary of state. If, however, an~~
 21 ~~agreement is not reached within 20 days of the filing of the~~
 22 ~~committee's objection, the committee shall notify the~~
 23 ~~governor of such fact, in writing, explaining its objections~~
 24 ~~to the statement filed and the governor shall, within 20~~
 25 ~~days of receipt of the committee's notice, file with the~~

1 secretary of state and the administrative code committee a
2 statement containing the information specified in subsection
3 (1) or (2).

4 (5) The statement approved by the administrative code
5 committee or the statement filed by the governor shall be
6 published by the secretary of state in the register and
7 mailed to persons who have requested advance notice of the
8 agency's rulemaking proceedings. This statement must be
9 published and mailed at least 20 days prior to the adoption,
10 amendment, or repeal of the rule. If a hearing is held, the
11 statement must be published 20 days prior to the hearing.

12 (4)(6) This section does not apply to rulemaking
13 pursuant to 2-4-303.

14 (5)(7) The final adoption, amendment, or repeal of a
15 rule is not subject to challenge in any court as a result of
16 the inaccuracy or inadequacy of a statement required under
17 this section."

-End-

STATE OF MONTANA

REQUEST NO. 170-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 81, there is hereby submitted a Fiscal Note for HB 329 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

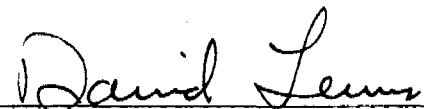
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Proposed legislation generally revises procedures for requests of administrative code committee for economic impact statement and publication of statements by Secretary of State.

FISCAL IMPACT:

None anticipated.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-81

Approved by Committee
on State Administration

HOUSE BILL No. 329

INTRODUCED BY

Randolph Sahl
Klopp

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT
REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS
PUBLICATION BY THE SECRETARY OF STATE; AMENDING SECTION
2-4-405, MCA."

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

Section 1. Section 2-4-405, MCA, is amended to read:

"2-4-405. Estimate of economic impact. (1) Upon
request of the administrative code committee, an agency
shall prepare a statement of the estimated economic impact
of the adoption, amendment, or repeal of a rule as proposed.
The statement must include an estimate of:

(a) the cost to the state of administering and
enforcing the rule;

(b) the aggregate cost of compliance to all persons
affected; and

(c) any economic benefit of compliance to all persons
affected.

~~(2) The statement must be filed with the secretary of
state for publication in the register and mailed to persons
who have requested advance notice of the agency's rulemaking~~

~~proceedings. The statement must be published and mailed at
least 20 days prior to the adoption, amendment, or repeal of
the rule. If a hearing is held, it must be published 20 days
prior to the hearing.~~

~~(3)(2) If it is impossible to formulate such an
estimate, the agency shall file with the administrative code
committee and the secretary of state a statement explaining
the reasons for impossibility of formulation must be
published instead of the estimate.~~

~~(3) Within 20 days after receiving the statement from
the agency, the administrative code committee shall file
with the secretary of state a statement that:~~

~~(a) approves its adequacy;~~

~~(b) objects to its adequacy; or~~

~~(c) disagrees with the agency on the question of
whether it is impossible to formulate such an estimate.~~

~~(4) If the administrative code committee and the
agency agree on a revised statement to replace a statement
objected to by the administrative code committee, it shall
be filed with the secretary of state. If, however, an
agreement is not reached within 20 days of the filing of the
committee's objection, the committee shall notify the
governor of such fact, in writing, explaining its objections
to the statement filed and the governor shall, within 20
days of receipt of the committee's notice, file with the~~

HB 329

1 secretary of state and the administrative code committee a
2 statement containing the information specified in subsection
3 (1) or (2).

4 (5) The statement approved by the administrative code
5 committee or the statement filed by the governor shall be
6 published by the secretary of state in the register and
7 mailed to persons who have requested advance notice of the
8 agency's rulemaking proceedings. This statement must be
9 published and mailed at least 20 days prior to the adoption,
10 amendment, or repeal of the rule. If a hearing is held, the
11 statement must be published 20 days prior to the hearing.

12 (4)(b) This section does not apply to rulemaking
13 pursuant to 2-4-303.

14 (5)(7) The final adoption, amendment, or repeal of a
15 rule is not subject to challenge in any court as a result of
16 the inaccuracy or inadequacy of a statement required under
17 this section."

-End-

Approved by Committee on State Administration

1 HOUSE BILL NO. 329
 2 INTRODUCED BY KANDUCH, PAVLOVICH, KROPP
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT
 6 REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS
 7 PUBLICATION BY THE SECRETARY OF STATE; AMENDING SEVERAL
 8 SECTIONS 2-4-305 AND 2-4-405, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 2-4-405, MCA, is amended to read:
 12 "2-4-405. Estimate of economic impact. (1) Upon
 13 request of the administrative code committee BY A VOTE OF AT
 14 LEAST SIX MEMBERS AT AN OPEN MEETING, an agency shall
 15 prepare a statement of the estimated economic impact of the
 16 adoption, amendment, or repeal of a rule as proposed. The
 17 statement must include an estimate of:
 18 (a) the cost to the state of administering and
 19 enforcing the rule;
 20 (b) the aggregate cost of compliance to all persons
 21 affected; and
 22 (c) any economic benefit of compliance to all persons
 23 affected.
 24 ~~(2) The statement must be filed with the secretary of~~
 25 ~~state for publication in the register and mailed to persons~~

1 ~~who have requested advance notice of the agency's rulemaking~~
 2 ~~proceedings. The statement must be published and mailed at~~
 3 ~~least 20 days prior to the adoption, amendment, or repeal of~~
 4 ~~the rule. If a hearing is held, it must be published 20 days~~
 5 ~~prior to the hearing.~~
 6 (2) A REQUEST MUST BE MADE BY THE COMMITTEE PRIOR TO
 7 THE FINAL AGENCY ACTION ON THE RULE AND SHALL SUSPEND ANY
 8 RULEMAKING PROCEEDINGS UNDER THIS CHAPTER THEN IN EFFECT IF
 9 A RULEMAKING HEARING ON THE PROPOSAL REMAINS TO BE HELD, AND
 10 SHALL NULLIFY ANY RULEMAKING PROCEEDINGS THEN IN EFFECT IF
 11 A FINAL RULEMAKING HEARING HAS ALREADY BEEN HELD OR NO
 12 HEARING HAS BEEN SCHEDULED BY THE AGENCY. IF RULEMAKING
 13 PROCEEDINGS HAVE BEEN SUSPENDED OR NULLIFIED UNDER THIS
 14 SUBSECTION, THOSE PROCEEDINGS MAY BEGIN AGAIN 20 DAYS AFTER
 15 THE PUBLICATION OF THE IMPACT STATEMENT OR THE STATEMENT
 16 FILED BY THE GOVERNOR PURSUANT TO SUBSECTION (6). THE
 17 COMMITTEE MAY WITHDRAW ITS REQUEST FOR AN ECONOMIC IMPACT
 18 STATEMENT AT ANY TIME.
 19 ~~(3) If it is impossible to formulate such an~~
 20 ~~estimate, the agency shall file with the administrative code~~
 21 ~~committee and the secretary of state a statement explaining~~
 22 ~~the reasons for impossibility of formulation must be~~
 23 ~~published instead of the estimate.~~
 24 (3) Within 20 days after receiving the A statement
 25 PROVIDED FOR IN SUBSECTION (1) OR (2) from the agency, the

1 administrative code committee shall file with the secretary
 2 of state a statement that:

3 (a) approves ~~its~~ THE adegquacy OF THE IMPACT STATEMENT;

4 (b) objects to ~~its~~ THE adegquacy OF THE IMPACT
 5 STATEMENT; or

6 (c) disagrees with the agency on the question of
 7 whether it is impossible to formulate such an estimate.

8 ~~(4)(5)~~ If the administrative code committee and the
 9 agency agree on a revised statement to replace a statement
 10 objected to by the administrative code committee, it shall
 11 be filed with the secretary of state. If, however, an
 12 agreement is not reached within 20 days of the filing of the
 13 committee's objection, the committee shall notify the
 14 governor of such fact, in writing, explaining its objections
 15 to the statement filed and the governor shall, within 20
 16 days of receipt of the committee's notice, file with the
 17 secretary of state and the administrative code committee a
 18 AN IMPACT statement containing the information specified in
 19 subsection (1) or A STATEMENT OF IMPOSSIBILITY UNDER
 20 SUBSECTION (2).

21 ~~(5)(6)~~ The statement approved by the administrative
 22 code committee or the statement filed by the governor shall
 23 be published by the secretary of state in the register and
 24 mailed to persons who have requested advance notice of the
 25 agency's rulemaking proceedings. This statement must be

1 published and mailed at least ~~20~~ 30 days prior to the
 2 adoption, amendment, or repeal of the rule. If a hearing is
 3 held, the statement must be published 20 days prior to the
 4 hearing. NOTICE OF A HEARING OR FINAL AGENCY ACTION ON THE
 5 RULE MUST BE GIVEN IN ACCORDANCE WITH 2-4-302.

6 ~~(4)(6)(7)~~ This section does not apply to rulemaking
 7 pursuant to 2-4-303.

8 ~~(5)(7)(8)~~ The final adoption, amendment, or repeal of
 9 a rule is not subject to challenge in any court as a result
 10 of the inaccuracy or inadequacy of a statement required
 11 under this section."

12 SECTION 2. SECTION 2-4-305, MCA, IS AMENDED TO READ:

13 "2-4-305. Requisites for validity -- authority and
 14 statement of reasons. (1) The agency shall consider fully
 15 written and oral submissions respecting the proposed rule.
 16 Upon adoption of a rule, an agency shall issue a concise
 17 statement of the principal reasons for and against its
 18 adoption, incorporating therein its reasons for overruling
 19 the considerations urged against its adoption. When no
 20 written or oral submissions have been received, an agency
 21 may omit the statement of reasons.

22 (2) Rules may not unnecessarily repeat statutory
 23 language. Whenever it is necessary to refer to statutory
 24 language in order to convey the meaning of a rule
 25 interpreting the language, the reference shall clearly

1 indicate that portion of the language which is statutory and
2 the portion which is amplification of the language.

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

9 (4) To be effective, each substantive rule adopted
10 must be within the scope of authority conferred and in
11 accordance with standards prescribed by other provisions of
12 law.

13 (5) 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 (6) No rule is valid unless adopted in substantial
21 compliance with 2-4-302 or 2-4-303 and this section and
22 unless notice of adoption thereof is published within 6
23 months of the publishing of notice of the proposed rule.
24 However, if rulemaking proceedings are suspended by action
25 of the administrative code committee prior to the expiration

1 of the 6-month deadline provided for in this subsection, the
2 agency may, following acceptance of the economic impact
3 statement by the committee, proceed with rulemaking during a
4 time period equivalent to that portion of the 6-month period
5 that remained prior to the action of the committee."

-End-

HOUSE BILL NO. 329

INTRODUCED BY KANDUCH, PAVLOVICH, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS PUBLICATION BY THE SECRETARY OF STATE; AMENDING SECTIONS 2-4-305 AND 2-4-405, MCA."

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

Section 1. Section 2-4-405, MCA, is amended to read:

"2-4-405. Estimate of economic impact. (1) Upon request of the administrative code committee BY A VOTE OF AT LEAST SIX MEMBERS AT AN OPEN MEETING, an agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

(a) the cost to the state of administering and enforcing the rule;

(b) the aggregate cost of compliance to all persons affected; and

(c) any economic benefit of compliance to all persons affected.

~~(2) The statement must be filed with the secretary of state for publication in the register and mailed to persons~~

~~who have requested advance notice of the agency's rulemaking proceedings. The statement must be published and mailed at least 20 days prior to the adoption, amendment, or repeal of the rule. If a hearing is held, it must be published 20 days prior to the hearing.~~

(2) A REQUEST MUST BE MADE BY THE COMMITTEE PRIOR TO THE FINAL AGENCY ACTION ON THE RULE AND SHALL SUSPEND ANY RULEMAKING PROCEEDINGS UNDER THIS CHAPTER THEN IN EFFECT IF A RULEMAKING HEARING ON THE PROPOSAL REMAINS TO BE HELD, AND SHALL NULLIFY ANY RULEMAKING PROCEEDINGS THEN IN EFFECT IF A FINAL RULEMAKING HEARING HAS ALREADY BEEN HELD OR NO HEARING HAS BEEN SCHEDULED BY THE AGENCY. IF RULEMAKING PROCEEDINGS HAVE BEEN SUSPENDED OR NULLIFIED UNDER THIS SUBSECTION, THOSE PROCEEDINGS MAY BEGIN AGAIN 20 DAYS AFTER THE PUBLICATION OF THE IMPACT STATEMENT OR THE STATEMENT FILED BY THE GOVERNOR PURSUANT TO SUBSECTION (6). THE COMMITTEE MAY WITHDRAW ITS REQUEST FOR AN ECONOMIC IMPACT STATEMENT AT ANY TIME.

~~(3) If it is impossible to formulate such an estimate, the agency shall file with the administrative code committee and the secretary of state a statement explaining the reasons for impossibility of formulation must be published instead of the estimate.~~

(4) Within 20 days after receiving the A statement PROVIDED FOR IN SUBSECTION (1) OR (3) from the agency,

1 the administrative code committee shall file with the
2 secretary of state a statement that:

3 (a) approves its THE adequacy OF THE IMPACT STATEMENT;

4 (b) objects to its THE adequacy OF THE IMPACT
5 STATEMENT; or

6 (c) disagrees with the agency on the question of
7 whether it is impossible to formulate such an estimate.

8 ~~(4)~~(5) If the administrative code committee and the
9 agency agree on a revised statement to replace a statement
10 objected to by the administrative code committee, it shall
11 be filed with the secretary of state. If, however, an
12 agreement is not reached within 20 days of the filing of the
13 committee's objection, the committee shall notify the
14 governor of such fact, in writing, explaining its objections
15 to the statement filed and the governor shall, within 20
16 days of receipt of the committee's notice, file with the
17 secretary of state and the administrative code committee a
18 AN IMPACT statement containing the information specified in
19 subsection (1) or A STATEMENT OF IMPOSSIBILITY UNDER
20 SUBSECTION ~~(2)~~ (3).

21 ~~(5)~~(6) The statement approved by the administrative
22 code committee or the statement filed by the governor shall
23 be published by the secretary of state in the register and
24 mailed to persons who have requested advance notice of the
25 agency's rulemaking proceedings. This statement must be

1 published and mailed at least 20 30 days prior to the
2 adoption, amendment, or repeal of the rule. If a hearing is
3 held, the statement must be published 20 days prior to the
4 hearing. NOTICE OF A HEARING OR FINAL AGENCY ACTION ON THE
5 RULE MUST BE GIVEN IN ACCORDANCE WITH 2-4-302.

6 ~~(4)~~(6)(7) This section does not apply to rulemaking
7 pursuant to 2-4-303.

8 ~~(5)~~(7)(8) The final adoption, amendment, or repeal of
9 a rule is not subject to challenge in any court as a result
10 of the inaccuracy or inadequacy of a statement required
11 under this section."

12 SECTION 2. SECTION 2-4-305, MCA, IS AMENDED TO READ:

13 "2-4-305. Requisites for validity -- authority and
14 statement of reasons. (1) The agency shall consider fully
15 written and oral submissions respecting the proposed rule.
16 Upon adoption of a rule, an agency shall issue a concise
17 statement of the principal reasons for and against its
18 adoption, incorporating therein its reasons for overruling
19 the considerations urged against its adoption. When no
20 written or oral submissions have been received, an agency
21 may omit the statement of reasons.

22 (2) Rules may not unnecessarily repeat statutory
23 language. Whenever it is necessary to refer to statutory
24 language in order to convey the meaning of a rule
25 interpreting the language, the reference shall clearly

1 indicate that portion of the language which is statutory and
2 the portion which is amplification of the language.

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

9 (4) To be effective, each substantive rule adopted
10 must be within the scope of authority conferred and in
11 accordance with standards prescribed by other provisions of
12 law.

13 (5) 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 (6) No rule is valid unless adopted in substantial
21 compliance with 2-4-302 or 2-4-303 and this section and
22 unless notice of adoption thereof is published within 6
23 months of the publishing of notice of the proposed rule.
24 However, if rulemaking proceedings are suspended by action
25 of the administrative code committee prior to the expiration

1 of the 6-month deadline provided for in this subsection, the
2 agency may, following acceptance of the economic impact
3 statement by the committee, proceed with rulemaking during a
4 time period equivalent to that portion of the 6-month period
5 that remained prior to the action of the committee."

-End-

HOUSE BILL NO. 329

INTRODUCED BY KANDUCH, PAVLOVICH, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS PUBLICATION BY THE SECRETARY OF STATE; AMENDING SECTION SECTIONS 2-4-305 AND 2-4-405, MCA."

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

Section 1. Section 2-4-405, MCA, is amended to read:

"2-4-405. Estimate of economic impact. (1) Upon request of the administrative code committee BY A VOTE OF AT LEAST SIX MEMBERS AT AN OPEN MEETING, an agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

(a) the cost to the state of administering and enforcing the rule;

(b) the aggregate cost of compliance to all persons affected; and

(c) any economic benefit of compliance to all persons affected.

(2) The statement must be filed with the secretary of state for publication in the register and mailed to persons

who have requested advance notice of the agency's rulemaking proceedings. The statement must be published and mailed at least 20 days prior to the adoption, amendment, or repeal of the rule. If a hearing is held, it must be published 20 days prior to the hearing.

(2) A REQUEST MUST BE MADE BY THE COMMITTEE PRIOR TO THE FINAL AGENCY ACTION ON THE RULE AND SHALL SUSPEND ANY RULEMAKING PROCEEDINGS UNDER THIS CHAPTER THEN IN EFFECT IF A RULEMAKING HEARING ON THE PROPOSAL REMAINS TO BE HELD AND SHALL NULLIFY ANY RULEMAKING PROCEEDINGS THEN IN EFFECT IF A FINAL RULEMAKING HEARING HAS ALREADY BEEN HELD OR NO HEARING HAS BEEN SCHEDULED BY THE AGENCY. IF RULEMAKING PROCEEDINGS HAVE BEEN SUSPENDED OR NULLIFIED UNDER THIS SUBSECTION, THOSE PROCEEDINGS MAY BEGIN AGAIN 20 DAYS AFTER THE PUBLICATION OF THE IMPACT STATEMENT OR THE STATEMENT FILED BY THE GOVERNOR PURSUANT TO SUBSECTION (2). THE COMMITTEE MAY WITHDRAW ITS REQUEST FOR AN ECONOMIC IMPACT STATEMENT AT ANY TIME.

(3)(2)(3) If it is impossible to formulate such an estimate, the agency shall file with the administrative code committee and the secretary of state a statement explaining the reasons for impossibility of formulation must be published instead of the estimate.

(3)(4) Within 20 days after receiving the A statement PROVIDED FOR IN SUBSECTION (1) OR (2) (3) from the agency

1 ~~the administrative code committee shall file with the~~
 2 ~~secretary of state a statement that:~~
 3 ~~(a) approves its THE adequacy OF THE IMPACT STATEMENT;~~
 4 ~~(b) objects to its THE adequacy OF THE IMPACT~~
 5 ~~STATEMENT; or~~
 6 ~~(c) disagrees with the agency on the question of~~
 7 ~~whether it is impossible to formulate such an estimate;~~
 8 ~~(4)(5) if the administrative code committee and the~~
 9 ~~agency agree on a revised statement to replace a statement~~
 10 ~~objected to by the administrative code committee it shall~~
 11 ~~be filed with the secretary of state; if however an~~
 12 ~~agreement is not reached within 20 days of the filing of the~~
 13 ~~committee's objection, the committee shall notify the~~
 14 ~~governor of such fact in writing explaining its objections~~
 15 ~~to the statement filed and the governor shall within 20~~
 16 ~~days of receipt of the committee's notice file with the~~
 17 ~~secretary of state and the administrative code committee a~~
 18 ~~AN IMPACT statement containing the information specified in~~
 19 ~~subsection (1) or A STATEMENT OF IMPOSSIBILITY UNDER~~
 20 ~~SUBSECTION (2) (3);~~
 21 ~~(5)(6) The statement approved by the administrative~~
 22 ~~code committee or the statement filed by the governor shall~~
 23 ~~be published by the secretary of state in the register and~~
 24 ~~mailed to persons who have requested advance notice of the~~
 25 ~~agency's rulemaking proceedings. This statement must be~~

1 ~~published and mailed at least 20 30 days prior to the~~
 2 ~~adoption, amendment or repeal of the rule; if a hearing is~~
 3 ~~held, the statement must be published 20 days prior to the~~
 4 ~~hearing. NOTICE OF A HEARING OR FINAL AGENCY ACTION ON THE~~
 5 ~~RULE MUST BE GIVEN IN ACCORDANCE WITH 2-4-302;~~
 6 ~~(4)(6)(7) This section does not apply to rulemaking~~
 7 ~~pursuant to 2-4-303;~~
 8 ~~(5)(7)(8) The final adoption, amendment or repeal of~~
 9 ~~a rule is not subject to challenge in any court as a result~~
 10 ~~of the inaccuracy or inadequacy of a statement required~~
 11 ~~under this section."~~
 12 SECTION 1. SECTION 2-4-405, MCA, IS AMENDED TO READ:
 13 "2-4-405. Estimate of economic Economic impact
 14 statement. (1) Upon written request of the administrative
 15 code committee based upon the affirmative request of at
 16 least five members of the committee at an open meeting, an
 17 agency designated by the committee shall prepare a statement
 18 of the estimated economic impact of the adoption, amendment,
 19 or repeal of a rule as proposed. The administrative code
 20 committee may also, by contract, prepare such an estimate.
 21 Except to the extent that the request expressly waives any
 22 one or more of the following, the requested statement must
 23 include and the statement prepared by the committee may
 24 include an estimate of:
 25 (a) the cost to the state of administering and

1 ~~enforcing the rules~~

2 ~~(b) the aggregate cost of compliance to all persons~~

3 ~~affected; and~~

4 ~~(c) any economic benefit of compliance to all persons~~

5 ~~affected;~~

6 (a) a description of the classes of persons who will

7 be affected by the proposed rule, including classes that

8 will bear the costs of the proposed rule and classes that

9 will benefit from the proposed rule;

10 (b) a description of the probable economic impact of

11 the proposed rule upon affected classes of persons and

12 quantifying, to the extent practicable, that impact;

13 (c) the probable costs to the agency and to any other

14 agency of the implementation and enforcement of the proposed

15 rule and any anticipated effect on state revenues;

16 (d) an analysis comparing the costs and benefits of

17 the proposed rule to the costs and benefits of inaction;

18 (e) an analysis that determines whether there are less

19 costly methods or less intrusive methods for achieving the

20 purpose of the proposed rule;

21 (f) an analysis of any alternative methods for

22 achieving the purpose of the proposed rule that were

23 seriously considered by the agency and the reasons why they

24 were rejected in favor of the proposed rule;

25 (g) a determination as to whether the proposed rule

1 represents an efficient allocation of public and private

2 resources; and

3 (h) a quantification or description of the data upon

4 which subsections (1)(a) through (1)(h) are based and an

5 explanation of how the data was gathered.

6 (2) A request must be made by the committee prior to

7 the final agency action on the rule and shall suspend for

8 not more than 6 months any rulemaking proceedings under this

9 chapter then in effect. If a final rulemaking hearing has

10 already been held or no hearing has been scheduled by the

11 agency, a rehearing, or initial hearing, must be held by the

12 agency upon approval of the statement by the administrative

13 code committee or by the governor. Written notice of the

14 committee's decision to prepare a statement shall be sent to

15 the agency and has the same effect as a committee request to

16 an agency. The statement must be filed with the secretary of

17 state for publication in the register, filed with the

18 administrative code committee and with the governor, and

19 mailed to persons who have requested advance notice of the

20 agency's rulemaking proceedings within 3 months of the

21 committee's request. The statement must be published and

22 mailed at least 20 days prior to the adoption, amendment, or

23 repeat of the rule; if a hearing is held, it must be

24 published 20 days prior to the hearing. The committee may

25 withdraw its request for economic impact statement at any

1 time.
 2 ~~{3}--if-it-is-impossible-to-formulate-such-an-estimatev~~
 3 ~~the--reasons--for--impossibility--of--formulation--must---be~~
 4 ~~published--instead-of-the-estimatev~~
 5 ~~{4}{3} This section does not apply to rulemaking~~
 6 ~~pursuant to 2-4-303.~~
 7 ~~{5}{4} The final adoption, amendment, or repeal of a~~
 8 ~~rule is not subject to challenge in any court as a result of~~
 9 ~~the inaccuracy or inadequacy of a statement required under~~
 10 ~~this section. However, the committee may approve or~~
 11 ~~recommend disapproval of any statement prepared by an agency~~
 12 ~~or under contract for the committee that it determines~~
 13 ~~inadequately covers those items contained in subsections~~
 14 ~~{1}{a} through {1}{h}. No agency may initiate or continue~~
 15 ~~rulemaking proceedings once suspended for any rule~~
 16 ~~substantially the same as the rule for which proceedings~~
 17 ~~were suspended until approval of the applicable statement by~~
 18 ~~the committee, or the governor pursuant to subsection {5},~~
 19 ~~or until expiration of 6 months following suspension of the~~
 20 ~~rule, whichever occurs first. Following approval or~~
 21 ~~expiration, notice of hearing shall be given in accordance~~
 22 ~~with 2-4-302{4}.~~
 23 ~~{5} If the committee recommends disapproval of an~~
 24 ~~economic impact statement, it shall give written notice to~~
 25 ~~the governor of that fact. The governor shall within 5 days~~

1 of receipt of the committee's notice of recommendation
 2 either approve or disapprove the economic impact statement.
 3 The governor shall not act to approve or disapprove a
 4 statement prior to receipt of notice from the committee."
 5 SECTION 2. SECTION 2-4-305, MCA, IS AMENDED TO READ:
 6 "2-4-305. Requisites for validity -- authority and
 7 statement of reasons. {1} The agency shall consider fully
 8 written and oral submissions respecting the proposed rule.
 9 Upon adoption of a rule, an agency shall issue a concise
 10 statement of the principal reasons for and against its
 11 adoption, incorporating therein its reasons for overruling
 12 the considerations urged against its adoption. When no
 13 written or oral submissions have been received, an agency
 14 may omit the statement of reasons.
 15 {2} Rules may not unnecessarily repeat statutory
 16 language. Whenever it is necessary to refer to statutory
 17 language in order to convey the meaning of a rule
 18 interpreting the language, the reference shall clearly
 19 indicate that portion of the language which is statutory and
 20 the portion which is amplification of the language.
 21 {3} Each rule shall include a citation to the specific
 22 grant of rulemaking authority pursuant to which it or any
 23 part thereof is adopted. In addition, each rule shall
 24 include a citation to the specific section or sections in
 25 the Montana Code Annotated which the rule purports to

1 implement.

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

6 (5) Whenever by the express or implied terms of any
7 statute a state agency has authority to adopt rules to
8 implement, interpret, make specific, or otherwise carry out
9 the provisions of the statute, no rule adopted is valid or
10 effective unless consistent and not in conflict with the
11 statute and reasonably necessary to effectuate the purpose
12 of the statute.

13 (6) No rule is valid unless adopted in substantial
14 compliance with 2-4-302 or 2-4-303 and this section and
15 unless notice of adoption thereof is published within 6
16 months of the publishing of notice of the proposed rule.
17 However, if rulemaking proceedings are suspended by action
18 of the administrative code committee UNDER 2-4-405 prior to
19 the expiration of the 6-month deadline provided for in this
20 subsection, the agency may, following acceptance of the
21 economic impact statement by the committee, BY THE GOVERNOR,
22 OR THE EXPIRATION OF 6 MONTHS FROM THE ACTION OF THE
23 COMMITTEE SUSPENDING THE RULE, proceed with rulemaking
24 during a time period equivalent to that portion of the
25 6-month period that remained prior to the action of the

1 committee or that additional period of time necessary to
2 provide notice of and conduct a hearing and adopt a rule
3 following the approval of an economic impact statement."

-End-

March 25, 1981

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 329 be amended as follows:

1. Page 1, line 11 through page 4, line 11.

Following: Page 1, line 10

Strike: Section 1 in its entirety

Insert: "Section 1. Section 2-4-405, MCA, is amended to read:

~~"2-4-405. Estimate-of-economic~~ Economic impact statement.

(1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency designated by the committee shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The administrative code committee may also, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include an estimate of:

~~(a) the cost to the state of administering and enforcing the rule;~~

~~(b) the aggregate cost of compliance to all persons affected, and~~

~~(c) any economic benefit of compliance to all persons affected.~~

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(h) are based and an explanation of how the data was gathered.

(2) A request must be made by the committee prior to the final agency action on the rule and shall suspend for not more than 6 months any rulemaking proceedings under this chapter then in effect. If a final rulemaking hearing has already been held or no hearing has been scheduled by the agency, a rehearing, or initial hearing, must be held by the agency upon approval of the statement by the administrative code committee or by the governor. Written notice of the committee's decision to prepare a statement shall be sent

to the agency and has the same effect as a committee request to an agency. The statement must be filed with the secretary of state for publication in the register, filed with the administrative code committee and with the governor, and mailed to persons who have requested advance notice of the agency's rulemaking proceedings within 3 months of the committee's request. The statement must be published and mailed at least 20 days prior to the adoption, amendments, or repeal of the rule. -- If a hearing is held, it must be published 20 days prior to the hearing. The committee may withdraw its request for an economic impact statement at any time.

~~(3) If it is impossible to formulate such an estimate, the reasons for impossibility of formulation must be published instead of the estimate.~~

~~(4)(3) This section does not apply to rulemaking pursuant to 2-4-303.~~

(4)(4) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section. However, the committee may approve or recommend disapproval of any statement prepared by an agency or under contract for the committee that it determines inadequately covers those items contained in subsections (1)(a) through (1)(h). No agency may initiate or continue rulemaking proceedings once suspended for any rule substantially the same as the rule for which proceedings were suspended until approval of the applicable statement by the committee, or the governor pursuant to subsection (5), or until expiration of 6 months following suspension of the rule, whichever occurs first. Following approval or expiration, notice of hearing shall be given in accordance with 2-4-302(4).

(5) If the committee recommends disapproval of an economic impact statement, it shall give written notice to the governor of that fact. The governor shall within 5 days of receipt of the committee's notice of recommendation either approve or disapprove the economic impact statement. The governor shall not act to approve or disapprove a statement prior to receipt of notice from the committee."

2. Page 5, line 25.
Following: "committee"
Insert: "under 2-4-405"

3. Page 6, line 3.
Following: "committee"
Insert: ", by the governor, or the expiration of 6 months from the action of the committee suspending the rule"

4. Page 6, line 5.
Following: "committee"
Insert: "or that additional period of time necessary to provide notice of and conduct a hearing and adopt a rule following the approval of an economic impact statement"



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

April 20, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 329, "AN ACT TO GENERALLY REVISE THE PROCEDURE FOR OBTAINING AN ECONOMIC IMPACT STATEMENT REQUIRED BY THE ADMINISTRATIVE CODE COMMITTEE AND ITS PUBLICATION BY THE SECRETARY OF STATE; AMENDING SECTIONS 2-4-305 AND 2-4-405, MCA."

House Bill No. 329 as passed, allows the Administrative Code Committee to suspend any rulemaking proceedings for up to six months if the Committee requests an agency to prepare an economic impact statement. This grant of authority to the committee raises a constitutional question relating to "Separation of Powers." The power to suspend rulemaking substantially interferes with my constitutional duty to see that the laws are expeditiously and faithfully executed. A suspension of rulemaking for up to six months may affect Montana's compliance with federal law where rulemaking is necessary in order to maintain jurisdiction of programs and eligibility for federal funds.

My major concern, however, is the delay inevitably resulting from a legislative suspension of rules. The current rulemaking process takes up to six months, in addi-

Senator Turnage and Representative Marks

April 20, 1981

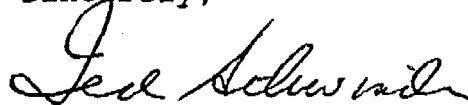
Page Two

tion to the time required for preliminary study and analysis. At a time when I am actively seeking to create an atmosphere conducive to economic development in this state, the additional six-month delay allowed by H.B. 329 is unacceptable. Moreover, the uncertainty associated with a legislative committee decision to suspend rules could be a significant deterrent to an investor, or to a business impacted by the rulemaking process.

Mechanisms already exist under present law to require economic analysis of proposed rules. Under existing law the Administrative Code Committee may request an agency to prepare an economic impact statement under the language of the Administrative Procedures Act. Additionally, if an EIS is being prepared under the Montana Environmental Policy Act, that EIS must analyze the economic impact of the proposed rules.

Delayed decisions and uncertainty over rule suspensions would have a negative impact on economic development and are ample reasons to veto H.B. 329.

Sincerely,



TED SCHWINDEN
Governor

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 626, "AN ACT TO REPEAL THE "EXCLUSIONARY RULE"; PROVIDING A CIVIL REMEDY FOR VIOLATION OF A PERSON'S CONSTITUTIONAL PRIVACY RIGHTS AND SEARCH AND SEIZURE RIGHTS; REQUIRING SUSPENSION OR DISMISSAL FROM EMPLOYMENT FOR AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION THEREOF WHO WRONGFULLY VIOLATES A PERSON'S CONSTITUTIONAL SEARCH AND SEIZURE RIGHTS; AMENDING SECTION 46-5-104, MCA; REPEALING SECTION 46-13-302, MCA," without my signature and recommend the attached amendments for the following reasons.

H.B. 626, as passed, repeals the "Exclusionary Rule" which protects a citizen from the use of evidence which has been obtained by an unlawful search and seizure for trial purposes. In its place, H.B. 626 provides a civil remedy for violations of that citizen's Constitutional right of privacy and protection against unreasonable search and seizure. In addition, H.B. 626 requires suspension or dismissal of a law enforcement official who wrongly violates these Constitutional rights.

The "Exclusionary Rule" has been used to enforce our constitutional right of privacy and protection against unreasonable search and seizure. Because an action for damages may not as adequately 'guarantee' these Constitutional rights, H.B. 626 may be unconstitutional. Furthermore, the benefits realized by using unconstitutionally seized evidence are outweighed by the costs a free society must pay as a whole.

Proponents of H.B. 626, who constituted a legislative majority, searched for an alternative to the exclusionary rule. They argued that the alternatives proposed would prevent suspects from getting off on "technicalities".

Critics of H.B. 626, however, argue that it will encourage over-zealous police to invade our homes with the slightest provocation, or create "do-nothing cops" hesitant to conduct any search and seizure for fear of dismissal. Neither alternative is acceptable in a society dedicated to upholding law and order.

Complex issues force hard decisions. The issues surrounding H.B. 626 are complicated, emotional and allow reasonable people to differ. Complexity and emotion, however, must not be allowed to obscure the basic issues. Protection against unlawful search and seizure and the right of individual privacy in our homes are principals fundamental to the fabric of our society. Violations of these rights by police are no more palatable than by criminals.

Currently, a good faith attempt is made by law enforcement officials to act on probable cause before embarking on any search and seizure. The possibility of dismissal may destroy this good faith effort to enforce the law in the spirit of the Constitution.

As Justice Brandeis has so succinctly said, "If the government becomes a law-breaker, it breeds contempt for law . . . ": In support of 'law and order' and with a strong personal commitment to the sanctity of our homes, I hereby veto House Bill 626.