

Senate Bill 181

In The Senate

January 19, 1981	Introduced and referred to Committee on State Administration.
February 3, 1981	Fiscal note requested.
February 9, 1981	Fiscal note returned.
February 12, 1981	Committee recommend bill do pass as amended.
February 13, 1981	Bill printed and placed on members' desks.
February 14, 1981	Second reading do pass.
February 16, 1981	Correctly engrossed.
February 17, 1981	Third reading passed.

In The House

February 18, 1981	Introduced and referred to Committee on State Administration.
April 23, 1981	Died in Committee.

1 *Smith* BILL NO. *181*
 2 INTRODUCED BY *Stony*
 3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 6 2-4-305 AND 2-4-405, MCA, RELATING TO ECONOMIC IMPACT
 7 STATEMENTS FOR STATE AGENCY RULEMAKING AND REQUIREMENTS FOR
 8 ADOPTION OF AGENCY RULES."

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 economic impact
 13 statement. (1) Upon ~~written~~ request of the administrative
 14 code committee, an agency designated by the committee shall
 15 prepare a statement of the estimated economic impact of the
 16 adoption, amendment, or repeal of a rule as proposed. The
 17 administrative code committee may also, by contract, prepare
 18 such an estimate. Except to the extent that the request
 19 expressly waives any one or more of the following, the
 20 requested statement must include and the statement prepared
 21 by the committee may include an estimate of:

- 22 ~~(a) the cost to the state of administering and~~
 23 ~~enforcing the rule;~~
- 24 ~~(b) the aggregate cost of compliance to all persons~~
 25 ~~affected; and~~

1 ~~(c) any economic benefit of compliance to all persons~~
 2 ~~affected;~~

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

7 (b) a description of the probable quantitative and
 8 qualitative impact of the proposed rule, including economic
 9 impact upon affected classes of persons;

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

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

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

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

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

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

1 ~~which subsections (1)(a) through (1)(h) are based and an~~
 2 ~~explanation of how the data was gathered.~~

3 (2) ~~A request must be made by the committee prior to~~
 4 ~~the final agency action on the rule and shall suspend any~~
 5 ~~rulemaking proceedings under this chapter then in effect if~~
 6 ~~a rulemaking hearing on the proposal remains to be held, and~~
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 8 ~~a final rulemaking hearing has already been held or no~~
 9 ~~hearing has been scheduled by the agency. Written notice of~~
 10 ~~the committee's decision to prepare a statement shall be~~
 11 ~~sent to the agency and has the same effect as a committee~~
 12 ~~request to an agency. The statement must be filed with the~~
 13 ~~secretary of state for publication in the register and~~
 14 ~~mailed to persons who have requested advance notice of the~~
 15 ~~agency's rulemaking proceedings within 3 months of the~~
 16 ~~committee's request. The statement must be published and~~
 17 ~~mailed at least 28 days prior to the adoption, amendment, or~~
 18 ~~repeat of the rule. If a hearing is held, it must be~~
 19 ~~published 28 days prior to the hearing. The committee may~~
 20 ~~withdraw its request for an economic impact statement at any~~
 21 ~~time.~~

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

25 ~~(4)(3) This section does not apply to rulemaking~~

1 pursuant to 2-4-303.

2 ~~(5)(4) The final adoption, amendment, or repeal of a~~
 3 ~~rule is not subject to challenge in any court as a result of~~
 4 ~~the inaccuracy or inadequacy of a statement required under~~
 5 ~~this section. However, the committee may refuse to accept~~
 6 ~~any statement prepared by an agency or under contract for~~
 7 ~~the committee that in its judgment inadequately covers those~~
 8 ~~items contained in subsections (1)(a) through (1)(h). No~~
 9 ~~agency may continue rulemaking proceedings once suspended or~~
 10 ~~renew rulemaking proceedings, once nullified, for any rule~~
 11 ~~substantially the same as that nullified, until acceptance~~
 12 ~~of the applicable statement by the committee.~~

13 ~~(5) The administrative code committee may, by petition~~
 14 ~~to the district court of Lewis and Clark County, enforce any~~
 15 ~~act required by this section and prevent the adoption or~~
 16 ~~enforcement of any rule adopted in violation of this~~
 17 ~~section."~~

18 Section 2. Section 2-4-305, MCA, is amended to read:
 19 "2-4-305. Requisites for validity -- authority and
 20 statement of reasons. (1) The agency shall consider fully
 21 written and oral submissions respecting the proposed rule.
 22 Upon adoption of a rule, an agency shall issue a concise
 23 statement of the principal reasons for and against its
 24 adoption, incorporating therein its reasons for overruling
 25 the considerations urged against its adoption. When no

1 written or oral submissions have been received, an agency
2 may omit the statement of reasons.

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

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

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

19 (5) Whenever by the express or implied terms of any
20 statute a state agency has authority to adopt rules to
21 implement, interpret, make specific, or otherwise carry out
22 the provisions of the statute, no rule adopted is valid or
23 effective unless consistent and not in conflict with the
24 statute and reasonably necessary to effectuate the purpose
25 of the statute.

1 (6) No rule is valid unless adopted in substantial
2 compliance with 2-4-302 or 2-4-303 and this section and
3 unless notice of adoption thereof is published within 6
4 months of the publishing of notice of the proposed rule.
5 However, if rulemaking proceedings are suspended by action
6 of the administrative code committee prior to the expiration
7 of the 6-month deadline provided for in this subsection, the
8 agency may, following acceptance of the economic impact by
9 the committee, proceed with rulemaking during a time period
10 equivalent to that portion of the 6-month period that
11 remained prior to the action of the committee."

-End-

STATE OF MONTANA

REQUEST NO. 296-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 4, , 19 81 , there is hereby submitted a Fiscal Note for Senate Bill 181 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

Description of Proposed Legislation

An act to amend sections 2-4-305 and 2-4-405, MCA, relating to economic impact statements for state agency rulemaking and requirements for adoption of agency rules.

Assumptions

1. Private consultants receive \$30 per person per hour for 40 hours a week, 20 days per month, plus expenses.
2. Using 1980 figures, (37 notices of proposed rulemaking filed by the Department of Health and Environmental Sciences) 3 small scale studies and 2 large scale studies will be requested per year with costs of each:

<u>TOTAL</u>	<u>TIME</u>	<u>MONEY</u>
Small Scale Study	63 days (3.15 months)	\$ 4,800 + expenses
with private attorney	63 days (3.15 months)	\$ 4,800 + \$4,000 + expenses
Large Scale Study	165 days (8.25 months)	\$31,200 + expenses (possibly
		x 2 or more persons)
with private attorney	165 days (8.25 months)	\$31,200 + expenses (possibly
		x 2 or more persons) + \$4,000

The above figures x 2 & 3 studies = \$139,200 + expenses per year.

Fiscal Impact

Expenditures (including expenses) approximately \$280,000 for the biennium.

Comment

Even though this measure applies to all state agencies, we have presented the above figures from the Department of Health and Environmental Sciences for illustrative purposes only. Obviously, the cost to the state will be higher when all the state agencies are considered; however, because there is no way of predicting the number of rules adopted during the next biennium, we are unable to compute the fiscal impact.

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-81

Approved by Committee
on State Administration

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 7 (b) a description of the probable ~~quantitative~~ and
 8 quantitative ECONOMIC impact of the proposed rule, including
 9 economic impact upon affected classes of persons AND
 10 QUANTIFYING, TO THE EXTENT PRACTICABLE, THAT IMPACT;
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 12 agency of the implementation and enforcement of the proposed
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 24 represents an efficient allocation of public and private
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1 (h) a quantification or description of the data upon
 2 which subsections (1)(a) through (1)(h) are based and an
 3 explanation of how the data was gathered.

4 (2) A request must be made by the committee prior to
 5 the final agency action on the rule and shall suspend any
 6 rulemaking proceedings under this chapter then in effect if
 7 a rulemaking hearing on the proposal remains to be held, and
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9 IF a final rulemaking hearing has already been held or no
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24 (3) If it is impossible to formulate such an estimate,
 25 the reasons for impossibility of formulation must be

1 published instead of the estimate.

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

4 (5)(4) The final adoption, amendment, or repeal of a
 5 rule is not subject to challenge in any court as a result of
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 14 same as that nullified. THE RULE FOR WHICH PROCEEDINGS WERE
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-End-