

Senate Bill 273

In The Senate

January 26, 1981	Introduced and referred to Committee on State Administration.
February 18, 1981	Committee recommend bill do pass as amended.
February 19, 1981	Bill printed and placed on members' desks.
February 20, 1981	Second reading do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading passed.

In The House

March 2, 1981	Introduced and referred to Committee on State Administration.
March 16, 1981	Committee recommend bill concurred.
March 19, 1981	Second reading concurred.
March 28, 1981	Third reading concurred.

In The Senate

March 30, 1981	Returned from House concurred. Sent to enrolling.
March 31, 1981	Correctly enrolled. Signed by President.

Governor's Office

April 3, 1981	Delivered to Governor.
April 9, 1981	Vetoed.

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INTRODUCED BY *Agency* BILL NO. *273*
Hayden Turnage Stey

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO TEMPORARILY SUSPEND AGENCY RULES; AMENDING SECTION 2-4-412, MCA."

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

NEW SECTION. Section 1. Temporary suspension of rules by the committee. (1) The committee may suspend any rule or portion of a rule by the affirmative vote of at least two-thirds of its members. A rule or portion thereof may be suspended only on the basis of testimony in relation to that rule or portion thereof received at a public hearing and only for one or more of the following reasons:

- (a) an absence of statutory authority;
- (b) an emergency relating to public health, safety, or welfare;
- (c) failure to comply with legislative intent;
- (d) being contrary to state law; or
- (e) being arbitrary and capricious or imposing an undue hardship.

(2) Suspension is effective upon the transmission of notice of the committee's action to the agency and until the end of the 20th day of the next regular session of the

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Legislature.

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 If a rule is repealed, the legislature shall in the joint resolution state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution.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

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

~~(3) The legislature shall, by joint resolution, at the next regular session following an action of the administrative code committee taken on any rule under the provisions of [section 1], either approve or reverse the~~

1 action. If the legislature fails to act under this
2 subsection, the action of the committee is considered
3 reversed. If the action of the committee is reversed, a rule
4 previously suspended again becomes effective and any
5 rulemaking proceedings previously suspended may be
6 continued, subject to the provisions of this chapter. If the
7 action of the committee is approved, the rule is rescinded
8 and the agency may not again propose or adopt any rule
9 substantially the same as the disapproved rule.

10 (3)(4) Rules made by agencies and changes in rules
11 directed by the legislature under subsection (2) of this
12 section shall conform and be pursuant to statutory
13 authority."

14 Section 3. Codification instruction. Section 1 is
15 intended to be codified as an integral part of Title 2,
16 chapter 4, and the provisions of Title 2, chapter 4, apply
17 to section 1.

-End-

Approved by Committee
on State Administration

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 2 INTRODUCED BY HAZELBAKER, TURNAGE, STORY
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 18 welfare;
 19 (c) failure to comply with legislative intent;
 20 (d) being contrary to state law; or
 21 (e) being arbitrary and capricious or imposing an
 22 undue hardship.
 23 (2) Suspension is effective upon the transmission of
 24 notice of the committee's action to the agency and until the
 25 ~~end-of-the-29th-day-of--the--next--regular--session--of--the~~

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 2 MEMBERS OF THE LEGISLATURE. THE COMMITTEE SHALL CONDUCT THE
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-End-

State of Montana
Office of the Governor
Helena 59620



TED SCHWINDEN
GOVERNOR

April 8, 1981

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

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

Dear Representative Marks and Senator Turnage:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 273, "AN ACT TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO TEMPORARILY SUSPEND AGENCY RULES; AMENDING SECTION 2-4-412, MCA," for the following reasons.

Senate Bill No. 273 as passed, raises a number of questions. Section 1 of the bill grants the Administrative Code Committee of the Legislature the power to temporarily suspend an agency rule. Under Judge v. Legislative Finance Committee, 168 Mont. 470, 543 P.2d 1317 (1975) this legislative grant of power appears to constitute an unlawful delegation of legislative authority to a committee of the Legislature. The temporary nature of the suspension does not alter the fact that the grant of power at issue here lies with the entire Legislature.

In addition, the criteria set forth in Section 1, which serve as the basis upon which the committee may suspend an agency rule, are so overly broad and so vague, they provide the committee with a "carte blanche" ticket for interference with the executive branch's constitutional duty to responsibly execute and administer the laws of Montana. The guarantee of "Separation of Powers" provided in Article III, Section 1 of the Montana Constitution may be violated by the exercise of this legislative committee power.

April 8, 1981

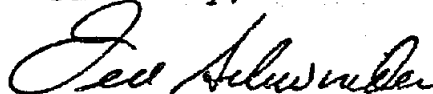
Page Two

Section 1 of the bill also provides that a suspension of a rule is effective until the committee certifies the results of a legislative poll, and that a poll be conducted within 2 weeks after the suspension. Section 2 of the bill provides for a "vote by mail ballot." Article V, Section 6 of the Montana Constitution, states in pertinent part, that the Legislature shall "meet" each odd-numbered year in regular "session" of not more than 90 legislative days and may be "convened" in special sessions by the Governor or at the written request of a majority of its members. Since the Constitution also requires that the seat of government be in Helena (Article III, Section 2) it appears that 'legislating by mail' is not constitutionally sanctioned. When the Legislature acts collectively to set public policy without being in session, without public participation, and without legislative deliberation, the legislative process is stripped of its essential elements and the citizens denied their fundamental rights. Fundamental democratic principles must not be summarily dismissed. If the Legislature is dissatisfied with agency rules, it should restrict the rulemaking authority it grants to the agencies.

Assurances of reasonable committee and legislative action under SB 273 do not diminish the seriousness of the constitutional questions raised. If the Legislature desires more control over the executive branch, let the record show that I urge and support annual sessions.

For these reasons, I hereby veto SB 273.

Sincerely,



TED SCHWINDEN
Governor