

Senate Bill 298

In The Senate

January 27, 1981	Introduced and referred 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.
February 14, 1981	Correctly engrossed.
February 16, 1981	Third reading passed.

In The House

February 17, 1981	Referred to Committee on State Administration.
March 24, 1981	Committee recommend bill concurred as amended.
March 28, 1981	Second reading pass consideration.
March 30, 1981	Second reading concurred as amended.  On motion rules suspended and bill placed on third reading this day.  On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Third reading concurred as amended.

In The Senate

April 1, 1981	Returned from House concurred as amended.
April 10, 1981	Second reading amendment not concurred.
April 11, 1981	On motion Free Conference Committee requested and appointed.

April 15, 1981	Conference Committee reported.
April 17, 1981	Second reading adopted. Third reading adopted.
April 22, 1981	Sent to enrolling.
April 23, 1981	Correctly enrolled. Signed by President.

Governor's Office

April 23, 1981	Delivered to Governor.
May 8, 1981	Vetoed.

SENATE BILL NO. 298

INTRODUCED BY HAZELBAKER, TURNAGE, BLAYLOCK

IN THE SENATE

January 27, 1981	Introduced and referred to Committee on State Administration.
February 11, 1981	Committee recommend bill do pass as amended. Report adopted.
February 12, 1981	Bill printed and placed on members' desks.
February 13, 1981	Second reading, do pass.
February 14, 1981	Correctly engrossed.
February 16, 1981	Third reading, passed. Ayes, 43; Nays, 3. Transmitted to House.

IN THE HOUSE

February 17, 1981	Introduced and referred to Committee on State Administration.
March 24, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, pass consideration.
March 30, 1981	Second reading, concurred in as amended.  On motion rules suspended and bill placed on third reading this day.  On motion rules suspended and bill allowed to be transmitted on 71st legislative day.

March 31, 1981

Third reading, concurred  
in as amended. Ayes, 65;  
Noes, 31.

IN THE SENATE

April 1, 1981

Returned from House with  
amendments.

April 10, 1981

Second reading, amendments  
not concurred in.

April 11, 1981

On motion Free Conference  
Committee requested and  
appointed.

April 15, 1981

Free Conference Committee  
reported.

April 17, 1981

Second reading, Free  
Conference Committee  
report adopted.

Third reading, Free Conference  
Committee report adopted.  
Ayes, 44; Noes, 3.  
Transmitted to House.

IN THE HOUSE

April 21, 1981

Free Conference Committee  
report adopted.

IN THE SENATE

April 22, 1981

Returned from House.  
Sent to enrolling.

Reported correctly enrolled.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

*Sen. Blaylock* BILL NO. *298*  
*Bartholomew Turnage Blaylock*

INTRODUCED BY  
A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE ADOPTION OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY DEFEATED BY THE LEGISLATURE OR A LEGISLATIVE COMMITTEE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
Section 1. Adoption of rule substantially identical to defeated bill prohibited. No state agency may adopt a rule that is substantially identical to or implements any major portion of any bill previously rejected by either house or any standing committee of the legislature, unless authorized by other law.  
Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to section 1.

-End-

Approved by Committee  
on State Administration

1                   SENATE BILL NO. 298  
2           INTRODUCED BY HAZELBAKER, TURNAGE, BLAYLOCK  
3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE ADOPTION  
5   OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY  
6   DEFEATED BY THE LEGISLATURE OR A LEGISLATIVE COMMITTEE."  
7  
8   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9       Section 1. Adoption of rule substantially identical to  
10   defeated bill prohibited. (1) No state agency may adopt a  
11   rule that is substantially identical to or implements any  
12   major portion of any bill previously rejected by either  
13   house or any standing committee of the legislature, unless  
14   authorized by other law.  
15       (2) IF A PERSON OR THE ADMINISTRATIVE CODE COMMITTEE  
16   OBJECTS TO A RULE ON THE BASIS OF SUBSECTION (1), THE RULE  
17   MAY NOT BE ADOPTED UNLESS THE AGENCY MAKES A WRITTEN  
18   DETERMINATION THAT:  
19       (A) THE BILL WAS REJECTED FOR REASONS NOT RELATED TO  
20   THE PORTION BEING IMPLEMENTED;  
21       (B) THE BILL WAS REJECTED AS BEING REDUNDANT WITH AN  
22   EXISTING LAW AUTHORIZING THE RULE; OR  
23       (C) A LAW PASSED AT THE SAME OR MORE RECENT SESSION  
24   AUTHORIZES THE ADOPTION OF THE RULE.  
25       (3) THE PROVISIONS OF 2-4-305(6) APPLY TO THIS

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

-End-

## 1 SENATE BILL NO. 298

2 INTRODUCED BY HAZELBAKER, TURNAGE, BLAYLOCK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE ADOPTION  
5 OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY  
6 DEFEATED BY THE LEGISLATURE OR A LEGISLATIVE COMMITTEE."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Adoption of rule substantially identical to  
10 defeated bill prohibited. (1) No state agency may adopt a  
11 rule that is substantially identical to or implements any  
12 major portion of any bill previously rejected by either  
13 house or any standing committee of the legislature, unless  
14 authorized by other law.

15 (2) IF A PERSON OR THE ADMINISTRATIVE CODE COMMITTEE  
16 OBJECTS TO A RULE ON THE BASIS OF SUBSECTION (1), THE RULE  
17 MAY NOT BE ADOPTED UNLESS THE AGENCY MAKES A WRITTEN  
18 DETERMINATION THAT:

19 (A) THE BILL WAS REJECTED FOR REASONS NOT RELATED TO  
20 THE PORTION BEING IMPLEMENTED;

21 (B) THE BILL WAS REJECTED AS BEING REDUNDANT WITH AN  
22 EXISTING LAW AUTHORIZING THE RULE; OR

23 (C) A LAW PASSED AT THE SAME OR MORE RECENT SESSION  
24 AUTHORIZES THE ADOPTION OF THE RULE.

25 (3) THE PROVISIONS OF 2-4-305(6) APPLY TO THIS

## 1 SECTION.

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

-End-

SENATE BILL NO. 298

INTRODUCED BY HAZELBAKER, TURNAGE, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE ADOPTION OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY DEFEATED BY THE LEGISLATURE; AND AMENDING SECTION 2-4-305, MCA BR-A-LEGISLATIVE-COMMITTEE."

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

Section 1. Adoption of rule substantially identical to defeated bill prohibited. ~~(1) No state agency may adopt a rule~~ IS VALID that is substantially identical to or implements any major portion of any bill previously rejected by either house ~~or any standing committee~~ of the Legislature DURING THE TWO PREVIOUS LEGISLATIVE SESSIONS, unless authorized by other law.

~~(2) IF A PERSON OR THE ADMINISTRATIVE CODE COMMITTEE OBJECTS IN WRITING TO A RULE ON THE BASIS OF SUBSECTION (1), THE RULE MAY NOT BE ADOPTED UNLESS THE AGENCY MAKES A WRITTEN DETERMINATION THAT:~~

~~(A) THE BILL WAS REJECTED FOR REASONS NOT RELATED TO THE PORTION BEING IMPLEMENTED; OR~~

~~(B) THE BILL WAS REJECTED AS BEING REDUNDANT WITH AN EXISTING LAW AUTHORIZING THE RULE; OR~~

~~(C) A LAW PASSED AT THE SAME OR MORE RECENT SESSION~~

AUTHORIZES THE ADOPTION OF THE RULE.

(3) THE PROVISIONS OF 2-4-305(6) APPLY TO THIS SECTION.

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

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

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

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



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

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

12           (6) No rule is valid unless adopted in substantial  
13 compliance with 2-4-302 or 2-4-303 and [section 1] and this  
14 section and unless notice of adoption thereof is published  
15 within 6 months of the publishing of notice of the proposed  
16 rule."

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

-End-

1 SENATE BILL NO. 298

2 INTRODUCED BY HAZELBAKER, TURNAGE, BLAYLOCK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE ADOPTION  
5 OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY  
6 DEFEATED BY THE LEGISLATURE; AND AMENDING SECTION 2-4-305,  
7 MCA OR-A-LEGISLATIVE-COMMITTEE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Adoption of rule substantially identical to  
11 defeated bill prohibited. (1) No state-agency--may--adopt--a  
12 rule IS VALID that is substantially identical to or  
13 implements any major portion of any bill previously AND  
14 FINALLY rejected by ANY VOTE OF either house or-any-standing  
15 committee of the legislature DURING THE TWO PREVIOUS  
16 LEGISLATIVE SESSIONS PRIOR TO THE ADOPTION OR PROPOSED  
17 ADOPTION OF THE RULE, unless EXPRESSLY authorized by other  
18 law.

19 (2) IF A-PERSON-OR THE ADMINISTRATIVE CODE COMMITTEE  
20 OBJECTS IN WRITING TO A RULE ON THE BASIS OF SUBSECTION (1),  
21 THE RULE MAY NOT BE ADOPTED UNLESS THE AGENCY MAKES A  
22 WRITTEN DETERMINATION THAT:

23 (A) THE BILL WAS REJECTED FOR REASONS NOT RELATED TO  
24 THE PORTION BEING IMPLEMENTED; OR

25 (B) THE BILL WAS REJECTED AS BEING REDUNDANT WITH AN

1 EXISTING LAW AUTHORIZING THE RULE; OR

2 (C) A LAW PASSED AT THE SAME OR MORE RECENT SESSION  
3 AUTHORIZES THE ADOPTION OF THE RULE.

4 (3) THE PROVISIONS OF 2-4-305(6) APPLY TO THIS  
5 SECTION.

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

7 "2-4-305. Requisites for validity -- authority and  
8 statement of reasons. (1) The agency shall consider fully  
9 written and oral submissions respecting the proposed rule.  
10 Upon adoption of a rule, an agency shall issue a concise  
11 statement of the principal reasons for and against its  
12 adoption, incorporating therein its reasons for overruling  
13 the considerations urged against its adoption. When no  
14 written or oral submissions have been received, an agency  
15 may omit the statement of reasons.

16 (2) Rules may not unnecessarily repeat statutory  
17 language. Whenever it is necessary to refer to statutory  
18 language in order to convey the meaning of a rule  
19 interpreting the language, the reference shall clearly  
20 indicate that portion of the language which is statutory and  
21 the portion which is amplification of the language.

22 (3) Each rule shall include a citation to the specific  
23 grant of rulemaking authority pursuant to which it or any  
24 part thereof is adopted. In addition, each rule shall  
25 include a citation to the specific section or sections in

1 the Montana Code Annotated which the rule purports to  
2 implement.

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

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

14 (6) No rule is valid unless adopted in substantial  
15 compliance with 2-4-302 or 2-4-303 and [section 1] and this  
16 section and unless notice of adoption thereof is published  
17 within 6 months of the publishing of notice of the proposed  
18 rule."

19 Section 3. Codification instruction. Section 1 is  
20 intended to be codified as an integral part of Title 2,  
21 chapter 4, and the provisions of Title 2, chapter 4, apply  
22 to section 1.

-End-

FREE CONFERENCE COMMITTEE  
ON SENATE BILL NO. 298

(Report No. 1, April 14, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 298, met April 14, 1981, and considered:

House State Administration Committee Amendments to the third reading copy, dated March 23, 1981, and;

Committee of the Whole Amendments to the third reading copy dated March 30, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 through 7 dated March 23, 1981;

That the Senate accede to the House Committee of the Whole Amendment nos. 1 and 2 dated March 30, 1981;

That the reference copy of Senate Bill No. 298 be further amended as specified in CLERICAL INSTRUCTIONS nos. 1 through 4;

That the reference copy of Senate Bill No. 298 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report to Senate Bill No. 298 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 1, line 13.  
Following: "previously"  
Insert: "and finally"


2. Page 1, line 14.  
Following: "by"  
Insert: "any vote of"

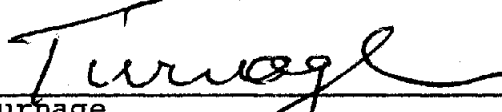
3. Page 1, line 15.  
Following: "SESSIONS"  
Insert: "prior to the adoption or proposed adoption of the rule"


4. Page 1, line 16.  
Following: "unless"  
Insert: "expressly"

FREE CONFERENCE COMMITTEE  
ON SENATE BILL NO. 298  
(Report No. 1, April 14, 1981)

FOR THE SENATE:


  
\_\_\_\_\_  
Hazelbaker, Chairman

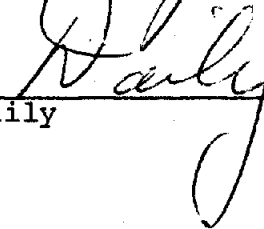
  
\_\_\_\_\_  
Turnage

  
\_\_\_\_\_  
Blaylock

FOR THE HOUSE:

  
\_\_\_\_\_  
Stobie, Chairman

  
\_\_\_\_\_  
Ryan

  
\_\_\_\_\_  
Daily

House amendments to Senate Bill 298:

1. Title, line 6.

Following: "LEGISLATURE"

Insert: ", AND AMENDING SECTION 2-4-305, MCA"

2. Page 1, line 15.

Following: "IF"

Strike: "A PERSON OR"

## HOUSE AMENDMENTS TO SB 298

1. Title, line 6.

Following: "LEGISLATURE"

Strike: "OR" through "COMMITTEE"

2. Page 1, line 10.

Following: "No"

Strike: remainder of line 10

3. Page 1, line 11.

Following: "rule"

Insert: "is valid"

4. Page 1, line 13.

Following: "house"

Strike: "or any standing committee"

Following: "legislature"

Insert: "during the two previous legislative sessions"

5. Page 1, line 16.

Following: "OBJECTS"

Insert: "in writing"

6. Page 1, line 20.

Following: " ;"

Insert: "or"

7. Page 2.

Following: line 1

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

2-4-305. Requisites for validity - authority and statement of reasons." Subsections (1) through (5) remain unchanged

"(6) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and [section 1] and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule."

Renumber: subsequent section

State of Montana  
Office of the Governor  
Helena 59620

TED SCHWINDEN  
GOVERNOR

May 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. 298, "AN ACT TO PREVENT THE ADOPTION OF AGENCY RULES THAT WOULD IMPLEMENT LEGISLATION PREVIOUSLY DEFEATED BY THE LEGISLATURE; AND AMENDING SECTION 2-4-305, MCA," for the following reasons.

Senate Bill 298 as passed, allows the Administrative Code Committee to object to an agency's proposed rule and prevent its adoption if the rule is identical to, or implements any portion of, a bill previously rejected by either house of the legislature during two previous legislative sessions. While the bill is conceptually attractive, practical problems associated with its implementation render it unacceptable.

Senate Bill 298 does not place specific and responsible limitations on agency rulemaking. Instead, it proposes an overly broad limitation on rulemaking based on a past legislature's rejection of a bill. In this respect, Senate Bill 298 requires an agency's staff to possess a clear knowledge of all defeated bills, and more significantly the reasons for their defeat. In order for SB 298 to work effectively, an indexed codification of defeated bills with their legislative histories must be prepared and made available to the executive agencies. Since



Representative Marks and Senator Turnage  
May 8, 1981  
Page Two

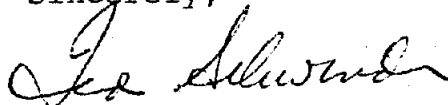
such a codification is not provided by SB 298, the task it imposes is virtually impossible to accomplish.

Constitutionally the lawmaking process requires, at a minimum, a majority vote of the legislature to pass each bill. SB 298 establishes a novel and undemocratic precedent whereby rejection of a bill by one house can have as binding an effect on an agency as a bill passed by a constitutional majority of the Legislature. SB 298 encourages tyranny by the minority. An attempt to restrict agency rulemaking by legislative 'inaction' is an affront to principles set forth by the Montana Constitution.

The solution provided by SB 298 to address alleged rule-making abuses of the past poses more problems than solutions. If executive agencies abuse their rulemaking authority, that authority should be legislatively curtailed or more clearly defined.

For these reasons, I hereby veto SB 298.

Sincerely,



TED SCHWINDEN  
Governor