

HOUSE BILL NO. 67

INTRODUCED BY HARPER

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 3, 1983	Introduced and referred to Committee on State Administration.
January 11, 1983	Committee recommend bill do pass as amended. Report adopted.
January 12, 1983	Bill printed and placed on members' desks.
January 13, 1983	Second reading, do pass.
January 14, 1983	Considered correctly engrossed.
January 15, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 17, 1983	Introduced and referred to Committee on State Administration.
March 8, 1983	Committee recommend bill be concurred in. Report adopted.
March 10, 1983	Second reading, concurred in.
March 12, 1983	Third reading, concurred in. Ayes, 46; Noes, 1.

IN THE HOUSE

March 12, 1983	Returned to House.
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March 14, 1983

Sent to enrolling.

Reported correctly  
enrolled.

1                    HOUSE      BILL NO. 67  
2    INTRODUCED BY HARPER  
3                    BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE  
4  
5    A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR DIRECT  
6    REPEAL OF ADMINISTRATIVE RULES BY BILL; TO PROVIDE FOR  
7    LEGISLATIVE DIRECTION BY BILL OR LEGISLATIVE REQUEST OR  
8    ADVICE BY JOINT RESOLUTION OF AGENCY ADOPTION, AMENDMENT, OR  
9    REPEAL OF ADMINISTRATIVE RULES AND TO REQUIRE COMPLIANCE  
10   WITH THAT DIRECTION WHEN ADOPTED IN BILL FORM; AMENDING  
11   SECTION 2-4-412, MCA."  
12  
13        WHEREAS, section 2-4-412, MCA, provides for the direct  
14    repeal of administrative rules by joint resolution of the  
15    Legislature and requires changes to be made in rules or new  
16    rules to be adopted in accordance with joint resolutions of  
17    the Legislature; and  
18        WHEREAS, on March 18, 1982, District Judge Gordon  
19    Bennett ruled in the case of The Montana Taxpayers'  
20    Association v. The Department of Revenue, Lewis and Clark  
21    County Civil No. 47126, that the Legislature's authority to  
22    mandate a change in administrative rules by joint resolution  
23    is unconstitutional, as a violation of the doctrine of  
24    separation of powers; and  
25        WHEREAS, the Legislature considers it desirable to

1    advise agencies by joint resolution that rules be adopted,  
2    amended, or repealed and expects its directions to agencies  
3    to have the force of law when adopted in the form of a bill.  
4        THEREFORE, it is the intent of the Legislature to  
5    provide for the direct repeal of administrative rules by  
6    bill; to provide for legislative requests or advice for the  
7    adoption, amendment, or repeal of administrative rules by  
8    joint resolution; to provide for legislative direction for  
9    the adoption, amendment, or repeal of administrative rules  
10   by bill; and to require agency compliance with that  
11   direction when adopted in bill form.  
12  
13    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14        Section 1. Section 2-4-412, MCA, is amended to read:  
15        "2-4-412. Legislative review of rules — effect of  
16    failure to object. (1) The legislature may, by joint  
17    resolution bill, repeal any rule in ARM. If a rule is  
18    repealed, the legislature shall in the joint-resolution bill  
19    state its objections to the repealed rule. If an agency  
20    adopts a new rule to replace the repealed rule, the agency  
21    shall adopt the new rule in accordance with the objections  
22    stated by the legislature in the joint-resolution bill. If  
23    the legislature does not repeal a rule filed with it before  
24    the adjournment of that regular session, the rule remains  
25    valid.

INTRODUCED BILL  
HB 67

1       (2) The legislature may also by joint resolution  
2       ~~request or advise or by bill~~ direct a change to be made in  
3       ~~the adoption, amendment, or repeal of~~ any rule ~~in ARM or~~  
4       ~~direct the adoption of an additional rule.~~ If a change in  
5       any rule or the adoption of an additional rule is advised,  
6       ~~requested, or~~ directed to be made, the legislature shall in  
7       the joint resolution or bill state the nature of the change  
8       or the additional rule to be made and its reasons therefor.  
9       The agency shall, in the manner provided in the Montana  
10      Administrative Procedure Act, adopt a new rule in accordance  
11      with the legislative direction in a bill.

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

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

-End-

Approved by Committee  
on State Administration

## HOUSE BILL NO. 67

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BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR DIRECT REPEAL OF ADMINISTRATIVE RULES BY BILL; TO PROVIDE FOR LEGISLATIVE DIRECTION BY BILL OR LEGISLATIVE REQUEST OR ADVICE BY JOINT RESOLUTION OF AGENCY ADOPTION, AMENDMENT, OR REPEAL OF ADMINISTRATIVE RULES AND TO REQUIRE COMPLIANCE WITH THAT DIRECTION WHEN ADOPTED IN BILL FORM; AMENDING SECTION 2-4-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, section 2-4-412, MCA, provides for the direct repeal of administrative rules by joint resolution of the Legislature and requires changes to be made in rules or new rules to be adopted in accordance with joint resolutions of the Legislature; and

WHEREAS, on March 18, 1982, District Judge Gordon Bennett ruled in the case of The Montana Taxpayers' Association v. The Department of Revenue, Lewis and Clark County Civil No. 47126, that the Legislature's authority to mandate a change in administrative rules by joint resolution is unconstitutional, as a violation of the doctrine of separation of powers; and

WHEREAS, the Legislature considers it desirable to advise agencies by joint resolution that rules be adopted, amended, or repealed and expects its directions to agencies to have the force of law when adopted in the form of a bill.

THEREFORE, it is the intent of the Legislature to provide for the direct repeal of administrative rules by bill; to provide for legislative requests or advice for the adoption, amendment, or repeal of administrative rules by joint resolution; to provide for legislative direction for the adoption, amendment, or repeal of administrative rules by bill; and to require agency compliance with that direction when adopted in bill form.

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

Section 1. Section 2-4-412, MCA, is amended to read:

"2-4-412. Legislative review of rules -- effect of failure to object. (1) The legislature may, by joint resolution bill, repeal any rule in ARM. If a rule is repealed, the legislature shall in the joint-resolution bill 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 bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains

1 valid.

2 (2) The legislature may also by joint resolution  
 3 ~~request or advise or by bill~~ direct a change to be made in  
 4 ~~the adoption, amendment, or repeal of~~ any rule in ARM or  
 5 ~~direct the adoption of an additional rule.~~ If a change in  
 6 any rule or the adoption of an additional rule is advised,  
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 8 the joint resolution or bill state the nature of the change  
 9 or the additional rule to be made and its reasons therefor.  
 10 The agency shall, in the manner provided in the Montana  
 11 Administrative Procedure Act, adopt a new rule in accordance  
 12 with the legislative direction in a bill.

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

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

21 NEW SECTION. SECTION 2. EFFECTIVE DATE. THIS ACT IS  
 22 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

Approved by Committee  
on State Administration

*As Amended*

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WHEREAS, section 2-4-412, MCA, provides for the direct repeal of administrative rules by joint resolution of the Legislature and requires changes to be made in rules or new rules to be adopted in accordance with joint resolutions of the Legislature; and

WHEREAS, on March 18, 1982, District Judge Gordon Bennett ruled in the case of The Montana Taxpayers' Association v. The Department of Revenue, Lewis and Clark County Civil No. 47126, that the Legislature's authority to mandate a change in administrative rules by joint resolution is unconstitutional, as a violation of the doctrine of separation of powers; and

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