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.

> Third reading, concurred in. Ayes, 46; Noes, 1.

> > IN THE HOUSE

March 12, 1983

March 12, 1983

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Returned to House.

March 14, 1983

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Sent to enrolling.

Reported correctly enrolled.

LC 0321/01

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1	HOUSE BILL NO. 67
2	INTRODUCED BY HARPER
3	BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
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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."

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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 <u>The Montana Taxpayers</u>² 20 <u>Association ye</u> <u>The Department of Revenue</u>, 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

advise agencies by joint resolution that rules be adopted, 1 2 amended, or repealed and expects its directions to agencies 3 to have the force of law when adopted in the form of a bill. THEREFORE, it is the intent of the Legislature to 4 5 provide for the direct repeal of administrative rules by bill: to provide for legislative requests or advice for the 6 adoption. amendment. or repeal of administrative rules by 7 joint resolution; to provide for legislative direction for B the adoption, amendment, or repeal of administrative rules 9 by bill; and to require agency compliance with that 10 11 direction when adopted in bill form.

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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 failure to object. (1) The legislature may, by joint 16 17 resolution bill, repeal any rule in ARM. If a rule is repealed, the legislature shall in the joint-resolution bill 18 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 stated by the legislature in the joint-resolution bill. If 22 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

LC 0321/01

HB 67

(2) The legislature may also by joint resolution 1 z request or advise or by bill direct e-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. requested. or directed to be made, the legislature shall in 6 the joint resolution or bill state the nature of the change 7 or the additional rule to be made and its reasons therefor. 8 9 The agency shall, in the manner provided in the Montana Administrative Procedure Act; adopt a new rule in accordance 10 11 with the legislative direction in a bill.

(3) Rules mode-by-ogencies and changes in rules
 directed-by--the--legislature made by agencies under
 subsection (2) of this section shall conform and be pursuant
 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-

-3--

48th Legislature

HB 0067/02

Approved by Committee on State Administration

HOUSE BILL NO. 67

INTRODUCED BY HARPER

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR DIRECT 6 REPEAL OF ADMINISTRATIVE RULES BY BILL; TO PROVIDE FOR LEGISLATIVE DIRECTION BY BILL OR LEGISLATIVE REQUEST OR 7 8 ADVICE BY JOINT RESOLUTION OF AGENCY ADOPTION, AMENDMENT, OR REPEAL OF ADMINISTRATIVE RULES AND TO REQUIRE COMPLIANCE 9 10 WITH THAT DIRECTION WHEN ADOPTED IN BILL FORM; AMENDING 11 SECTION 2-4-412, MCA: AND PROVIDING AN IMMEDIATE EFFECTIVE 12 DATE."

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WHEREAS, section 2-4-412, MCA, provides for the direct 14 15 repeal of administrative rules by joint resolution of the 16 Legislature and requires changes to be made in rules or new 17 rules to be adouted in accordance with joint resolutions of 18 the Legislature; and

19 WHEREAS, on March 18, 1982, District Judge Gordon dennett ruled in the case of <u>The Montana Taxpayers!</u> 20 21 Association v. The Department of Revenue, Lewis and Clark County Civil No. 47126, that the Legislature's authority to 22 23 mandate a change in administrative rules by joint resolution 24 is unconstitutional, as a violation of the doctrine of 25 separation of powers; and

1 WHEREAS, the Legislature considers it desirable to 2 advise agencies by joint resolution that rules be adopted, 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 5 THEREFORE, it is the intent of the Legislature to 6 provide for the direct repeal of administrative rules by 7 bill: to provide for legislative requests or advice for the adoption, amendment, or repeal of administrative rules by 8 9 joint resolution; to provide for legislative direction for 10 the adoption, amendment, or repeal of administrative rules by bill; and to require agency compliance with that 11 12 direction when adopted in bill form.

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 17 failure to object. (1) The legislature may, by joint resolution bill, repeal any rule in ARM. If a rule is 18 19 repealed, the legislature shall in the joint-resolution hill state its objections to the repealed rule. If an agency **Z**0 adopts a new rule to replace the repealed rule, the agency 21 22 shall adopt the new rule in accordance with the objections 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

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HB 0067/02

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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 adoptions amendments 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. 7 requested, or directed to be made, the legislature shall in 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.

(3) Rules made--by--agencies and changes in rules
 directed--by--the--legisloture made._by__agencies under
 subsection (2) of this section shall conform and be pursuant
 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.

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-End-

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HB 0067/02

Approved by Committee on State Administration

1	HOUSE BILL NO. 67 As Amended
2	INTRODUCED BY HARPER
. 3	BY REQUEST OF THE ADMINISTRATIVE CODE CONNITTEE
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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 <u>: AND PROVIDING AN IMMEDIATE EFFECTIVE</u>
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13	
14	WHEREAS, section 2-4-412, NCA, provides for the direct
15	repeal of administrative rules by joint resolution of the
16	Legislature and requires changes to be made in rules or new
17	rules to be adopted in accordance with joint resolutions of
18	the Legislature; and
19	WHEREAS, on March 18, 1982, District Judge Gordon
20	Bennett ruled in the case of <u>Ibe_Montana_Iaxpayers</u> !
21	<u>Association_ve_Ibe_Department_of_Bevenue</u> , Lewis and Clark
22	County Civil No. 47126, that the Legislature's authority to
23	mandate a change in administrative rules by joint resolution

24 is unconstitutional, as a violation of the doctrine of 25 separation of powers; and

1 WHEREAS, the Legislature considers it desirable to 2 advise agencies by joint resolution that rules be adopted. 3 amended, or repealed and expects its directions to agencies 4 to have the force of law when adopted in the form of a bill. 5 THEREFORE, it is the intent of the Legislature to 6 provide for the direct repeal of administrative rules by 7 bill; to provide for legislative requests or advice for the 8 adoption, amendment, or repeal of administrative rules by 9 joint resolution; to provide for legislative direction for 10 the adoption, amendment, or repeal of administrative rules 11 by bill; and to require agency compliance with that 12 direction when adopted in bill form.

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

15 Section 1. Section 2-4-412, MCA, is amended to read: "2-4-412. Legislative review of rules -- effect of 16 17 failure to object. (1) The legislature may, by ioint 18 resolution bill, repeal any rule in ARM. If a rule is 19 repealed, the legislature shall in the joint-resolution bill state its objections to the repealed rule. If an agency 20 21 adopts a new rule to replace the repealed rule, the agency 22 shall adopt the new rule in accordance with the objections 23 stated by the legislature in the joint-resolution bill. If the legislature does not repeal a rule filed with it before 24 25 the adjournment of that regular session, the rule remains READING THIRD -2-HB 67

1 valid.

2 (2) The legislature may also by joint resolution 3 request or advise or by bill direct e-change-to-be--made--in 4 the adoptions amendment. or repeal of any rule in-ARM-or 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 10 The agency shall, in the manner provided in the Montana 11 Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill. 12

(3) Rules mode--by--agencies and changes in rules
 directed--by--the--legislature made, by, agencies under
 subsection (2) of this section shall conform and be pursuant
 to statutory authority.

17 (4) Failure of the Tegislature 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-

-3-

HB 67

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HB 0067/02

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 <u>LANG_PROVIDING_AN_IMMEDIATE_EEEECIIVE</u>	
12	DAIE."	
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14	WHEREAS, section 2-4-412, MCA, provides for the direct	
15	repeal of administrative rules by joint resolution of the	
16	Legislature and requires changes to be made in rules or new	
17	rules to be adopted in accordance with joint resolutions of	
18	the Legislature; and	
19	HEREAS, on March 18, 1982, District Judge Gordon	
20	Bennett ruled in the case of <u>The Montana Taxpayers</u> *	
21	<u>Association_x. The Department of Revenue</u> , Lewis and Clark	
22	County Civil No. 47126, that the Legislature's authority to	
23	mandate a change in administrative rules by joint resolution	
24	is unconstitutional, as a violation of the doctrine of	
25	separation of powers; and	

1	#HEREAS, the Legislature considers it desirable to
2	advise agencies by joint resolution that rules be adopted,
3	amended, or repealed and expects its directions to agencies
4	to have the force of law when adopted in the form of a bill.
5	THEREFORE, it is the intent of the Legislature to
6	provide for the direct repeal of administrative rules by
7	bill; to provide for legislative requests or advice for the
8	adoption, amendment, or repeal of administrative rules by
9	joint resolution; to provide for legislative direction for
10	the adoption, amendment, or repeal of administrative rules
11	by bill; and to require agency compliance with that
12	direction when adopted In bill form.

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

15 Section 1. Section 2-4-412, MCA, is amended to read: 16 "2-4-412. Legislative review of rules -- effect of 17 failure to object. (1) The legislature may, by joint 18 resolution bill, repeal any rule in ARM. If a rule is 19 repealed, the legislature shall in the joint-resolution bill 20 state its objections to the repealed rule. If an agency 21 adopts a new rule to replace the repealed rule, the agency 22 shall adopt the new rule in accordance with the objections 23 stated by the legislature in the joint-resolution bill. If 24 the legislature does not repeal a rule filed with it before 25 the adjournment of that regular session, the rule remains

> -2- HB 67 REFERENCE BILL

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2 (2) The legislature may also by joint resolution 3 request or advise or by bill direct a-change-to-be--mode--in 4 the adoptions amandments or repeal of any rule in-ARH-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. 7 requesteds or directed to be made, the legislature shall in 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.

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 14 directed--by--the--fegislature made._by___agencles 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. EFERCITYE DATE. THIS ACT IS

22 EFEECIIVE_ON_PASSAGE_AND_APPROVAL.

-End~

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