

HOUSE BILL NO. 92

INTRODUCED BY STOBIE,
DAILY, SCHULTZ, HARPER

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 5, 1983	Introduced and referred to Committee on State Administration.
January 11, 1983	Committee recommend bill do pass. Report adopted.
January 12, 1983	Bill printed and placed on members' desks. On motion rules suspended and bill placed on second reading this day.
January 14, 1983	Second reading, do pass.
January 15, 1983	Considered correctly engrossed.
January 17, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 18, 1983	Introduced and referred to Committee on State Administration.
March 2, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 4, 1983	Second reading, concurred in.
March 7, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 7, 1983	Returned to House with amendments.
March 9, 1983	Second reading, amendments concurred in.
March 10, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
March 12, 1983	Correctly enrolled.
March 14, 1983	Signed by President.
	Signed by Speaker.
March 15, 1983	Delivered to Governor.
March 19, 1983	Governor's recommendation for amendments submitted to the House.
March 31, 1983	Second reading, Governor's amendments not concurred in.
April 1, 1983	On motion, previous action reconsidered.
April 4, 1983	Second reading, Governor's amendments concurred in.
April 5, 1983	Third reading, Governor's amendments concurred in.

IN THE SENATE

April 6, 1983	Governor's amendments transmitted to Senate.
April 7, 1983	Second reading, Governor's amendments concurred in.
April 8, 1983	Third reading, Governor's amendments concurred in. Ayes, 47; Noes, 1.

IN THE HOUSE

April 9, 1983

Returned to House. Sent to enrolling.

Reported correctly enrolled.

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 2 INTRODUCED BY *Stobie Daryl Schultz, Hager*

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
 6 ADMINISTRATIVE CODE COMMITTEE TO OBJECT TO ANY RULE UPON THE
 7 GROUND THAT IT WAS ADOPTED IN SUBSTANTIAL VIOLATION OF THE
 8 PROCEDURAL OR SUBSTANTIVE AUTHORITY DELEGATED TO THE AGENCY;
 9 REQUIRING THE AGENCY, AFTER OBJECTION BY THE COMMITTEE, TO
 10 PROVE THE LAWFULNESS OF THE RULE; AWARDING COSTS AND
 11 ATTORNEY FEES AGAINST THE AGENCY IF THE RULE IS INVALIDATED
 12 BY COURT JUDGMENT; AMENDING SECTION 2-4-506, MCA."

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

15 NEW SECTION. Section 1. Committee objection to
 16 violation of authority for rule — effect. (1) If the
 17 administrative code committee objects to all or some portion
 18 of a proposed or adopted rule because the committee
 19 considers it not to have been proposed or adopted in
 20 substantial compliance with 2-4-302, 2-4-303, and 2-4-305,
 21 the committee shall send a written objection to the agency
 22 which promulgated the rule. The objection must contain a
 23 concise statement of the committee's reasons for its action.

24 (2) Within 14 days after the mailing of a committee
 25 objection to a rule, the agency promulgating the rule shall

1 respond in writing to the committee. After receipt of the
 2 response, the committee may withdraw or modify its
 3 objection.

4 (3) If the committee fails to withdraw or
 5 substantially modify its objection to a rule, it may vote to
 6 send the objection to the secretary of state, who shall,
 7 upon receipt thereof, publish the objection in the Montana
 8 Administrative Register adjacent to any notice of adoption
 9 of the rule and in the ARM adjacent to the rule. Costs of
 10 publication of the objection shall be borne by the
 11 committee.

12 (4) If an objection to all or a portion of a rule has
 13 been published pursuant to subsection (3), the agency bears
 14 the burden, in any action challenging the legality of the
 15 rule or portion of a rule objected to by the committee, of
 16 proving that the rule or portion of the rule objected to was
 17 adopted in substantial compliance with 2-4-302, 2-4-303, and
 18 2-4-305. If a rule is invalidated by court judgment because
 19 the agency failed to meet its burden of proof imposed by
 20 this subsection, the court shall award costs and reasonable
 21 attorney fees against the agency.

22 Section 2. Section 2-4-506, MCA, is amended to read:

23 "2-4-506. Declaratory judgments on validity or
 24 application of rules. (1) A rule may be declared invalid or
 25 inapplicable in an action for declaratory judgment if it is

1 found that the rule or its threatened application interferes
2 with or impairs or threatens to interfere with or impair the
3 legal rights or privileges of the plaintiff.

4 (2) A rule may also be declared invalid in such an
5 action on the grounds that the rule was ~~not~~ adopted with ~~an~~
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16 ~~(4)(3)~~ A declaratory judgment may be rendered whether
17 or not the plaintiff has requested the agency to pass upon
18 the validity or applicability of the rule in question.

19 ~~(5)(4)~~ The action may be brought in the district court
20 for the county in which the plaintiff resides or has his
21 principal place of business or in which the agency maintains
22 its principal office. The agency shall be made a party to
23 the action."

24 NEW SECTION. Section 3. Codification instruction.
25 Section 1 is intended to be codified as an integral part of

1 Title 2, chapter 4, part 4, and the provisions of Title 2,
2 chapter 4, apply to section 1.

-End-

STATE OF MONTANA

REQUEST NO. 055-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 6, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 92 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:

House Bill 92 gives the Administrative Code Committee the authority to object to rules proposed or adopted in violation of the requirements of the Administrative Procedure Act, and places upon the promulgating agency, the burden of proof, in any subsequent legal challenge to the rule, to prove that the rule was in fact adopted in compliance with the act.

ASSUMPTIONS:

The fiscal impact of HB 92 depends upon:

- 1) The number of rules objected to by the committee;
- 2) The response of agencies to committee objections and committee responses thereto;
- 3) The number of law suits brought challenging administrative rules objected to by the committee;
- 4) The holding of the Court; and
- 5) The substance of the rule.

FISCAL IMPACT:

Impossible to determine.

FISCAL1:X/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-7-83

Approved by Committee
on State Administration

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21 the committee shall send a written objection to the agency
22 which promulgated the rule. The objection must contain a
23 concise statement of the committee's reasons for its action.

24 (2) Within 14 days after the mailing of a committee
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2 response, the committee may withdraw or modify its
3 objection.

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5 substantially modify its objection to a rule, it may vote to
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7 upon receipt thereof, publish the objection in the Montana
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19 the agency failed to meet its burden of proof imposed by
20 this subsection, the court shall award costs and reasonable
21 attorney fees against the agency.

22 Section 2. Section 2-4-506, MCA, is amended to read:
23 "2-4-506. Declaratory judgments on validity or
24 application of rules. (1) A rule may be declared invalid or
25 inapplicable in an action for declaratory judgment if it is

found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was ~~not~~ adopted with an arbitrary or capricious disregard for the purpose of authorizing statutes as evidenced by documented legislative intent in substantial compliance with 2-4-302, 2-4-303, and 2-4-305.

~~(3) If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in subsection (2), the agency bears the burden in any action brought under this section of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statutes.~~

~~(4)(3)~~ A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

~~(5)(4)~~ The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action."

NEW SECTION. Section 3. Codification instruction.
Section 1 is intended to be codified as an integral part of

Title 2, chapter 4, part 4, and the provisions of Title 2, chapter 4, apply to section 1.

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THIRD READING

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March 2, 1983

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 92 be amended as follows:

1. Title, line 10.
Strike: "AWARDING"
Insert: "ALLOWING"
2. Page 2, line 9.
Following: "to the rule"
Insert: ", provided an agency response must also
be published if requested by the agency"
3. Page 2, line 10.
Following: "objection"
Insert: "and the agency response"
4. Page 2, line 20.
Strike: "shall"
Insert: "may"
5. Page 3, line 5.
Strike: "not"
6. Page 3, line 8.
Following: "~~intent~~"
Insert: "with an arbitrary or capricious disregard for
the purpose of the authorizing statute as evidenced by
documented legislative intent, or was not"

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12 PURPOSE OF THE AUTHORIZING STATUTE AS EVIDENCED BY
13 DOCUMENTED LEGISLATIVE INTENT OR WAS NOT in substantial
14 compliance with 2-4-302, 2-4-303, and 2-4-305.

15 ~~{3}--if--the--administrative--code--committee--has--objected~~
16 ~~to--the--adoption--or--amendment--of--a--rule--on--the--grounds--set~~
17 ~~forth--in--subsection--(2),--the--agency--bears--the--burden--in--any~~
18 ~~action--brought--under--this--section--of--proving--that--its--rule~~
19 ~~was--not--adopted--with--an--arbitrary--or--capricious--disregard~~
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7 chapter 4, apply to section 1.

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1. Page 2, line 23
Following: "subsection"
Insert: "and the court finds that the rule was adopted in arbitrary
and capricious disregard for the purposes of the authorizing
statute"
2. Page 3, line 13
Following: "INTENT"
Delete: "OR WAS NOT in substantial compliance with 2-4-302,
2-4-303, and 2-4-305"

ADOPT

REJECT

AA

HOUSE BILL NO. 92

INTRODUCED BY STOBIE,

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award costs and reasonable attorney fees against the agency.

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