

SENATE BILL NO. 40  
INTRODUCED BY STORY  
BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

January 3, 1983	Introduced and referred to Committee on State Administration.
January 4, 1983	Fiscal Note requested.
January 10, 1983	Fiscal Note returned.
February 14, 1983	Committee recommend bill do pass as amended. Report adopted.
February 15, 1983	Bill printed and placed on members' desks.
February 16, 1983	Second reading, do pass.
February 18, 1983	Correctly engrossed.
February 19, 1983	Third reading, passed. Ayes, 47; Noes, 1. Transmitted to House.

IN THE HOUSE

March 1, 1983	Introduced and referred to Committee on State Administration.
March 23, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in.

IN THE SENATE

March 28, 1983	Returned to Senate with amendments.
April 5, 1983	Second reading, pass consideration.
April 6, 1983	Third reading, amendments not concurred in. Ayes, 50; Noes, 0.
April 8, 1983	On motion, Conference Committee requested and appointed.
April 18, 1983	Conference Committee dissolved.
	On motion, Free Conference Committee requested and appointed.
April 19, 1983	Free Conference Committee reported.
	Second reading, Free Conference Committee report adopted.
April 20, 1983	Third reading, Free Conference Committee report adopted.
	Free Conference Committee report adopted by House.
	Sent to enrolling.
	Reported correctly enrolled.

1                   SENATE BILL NO. 40

2 INTRODUCED BY STORY

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAW RELATING TO STATEMENTS OF ECONOMIC IMPACT OF PROPOSED  
7 ADMINISTRATIVE RULEMAKING; AMENDING SECTIONS 2-4-305 AND  
8 2-4-405, MCA."

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

11         Section 1. Section 2-4-405, MCA, is amended to read:  
12         "2-4-405. Estimate--of---economic Economic impact  
13 statement. (1) Upon written request of the administrative  
14 code committee based upon the affirmative request of at  
least five members of the committee at an open meeting, an  
15 agency designated by the committee shall prepare a statement  
16 of the estimated economic impact of the adoption, amendment,  
17 or repeal of a rule as proposed. The administrative code  
18 committee may also, by contract, prepare such an estimate.  
19 Except to the extent that the request expressly waives any  
20 one or more of the following, the requested statement must  
21 include and the statement prepared by the committee may  
22 include an estimate of:

23                 (a) the cost--to--the--state--of--administering--and  
24                 enforcing-the-rules;

1                 (b) the aggregate cost--of--compliance to all persons  
2 affected; and  
3                 (c) any economic benefit--of--compliance to all persons  
4 affected.  
5                 (i) a description of the classes of persons who will  
6 be affected by the proposed rule, including classes that  
7 will bear the costs of the proposed rule and classes that  
8 will benefit from the proposed rule;  
9                 (ii) a description of the probable economic impact of  
10 the proposed rule upon affected classes of persons and  
11 quantifying, to the extent practicable, that impact;  
12                 (iii) the probable costs to the agency and to any other  
13 agency of the implementation and enforcement of the proposed  
14 rule and any anticipated effect on state revenues;  
15                 (iv) an analysis comparing the costs and benefits of  
16 the proposed rule to the costs and benefits of inaction;  
17                 (v) an analysis that determines whether there are less  
18 costly or less intrusive methods for achieving the purpose  
19 of the proposed rule;  
20                 (vi) an analysis of any alternative methods for  
21 achieving the purpose of the proposed rule that were  
22 seriously considered by the agency and the reasons why they  
23 were rejected in favor of the proposed rule;  
24                 (vii) a determination as to whether the proposed rule  
25 represents an efficient allocation of public and private

INTRODUCED BILL

1       resources; and

2               (b) a quantification or description of the data upon  
3       which subsections (1)(a) through (1)(g) are based and an  
4       explanation of how the data was gathered.

5               (2) A request must be made by the committee prior to  
6       the final agency action on the rule and suspends for not  
7       more than 6 months any rulemaking proceedings under this  
8       chapter then in progress. If a rulemaking hearing has  
9       already been held or was scheduled by the agency prior to  
10      the request or decision for a statement, a rehearing or  
11      initial hearing must be held by the agency upon approval of  
12      the statement by the administrative code committee or by the  
13      governor. Written notice of the committee's decision to  
14      prepare a statement shall be sent to the agency and has the  
15      same effect as a committee request to an agency. The  
16      statement must be filed with the secretary of state for  
17      publication in the register, filed with the administrative  
18      code committee and with the governor, and mailed to persons  
19      who have requested advance notice of the agency's rulemaking  
20      proceedings within 3 months of the committee's request or  
21      decision. The statement must be published and posted at  
22      least 20 days prior to the adoption, amendment or repeal of  
23      the rule. If a hearing is held, it must be published 20 days  
24      prior to the hearing. The committee may withdraw its request  
25      or decision for an economic impact statement at any time.

1               (3) If it is impossible to formulate such an estimate  
2       the reasons for impossibility of formulation must be  
3       published instead of the estimate.

4               (4)(3) This section does not apply to rulemaking  
5       pursuant to 2-4-303.

6               (5)(4) The final adoption, amendment, or repeal of a  
7       rule is not subject to challenge in any court as a result of  
8       the inaccuracy or inadequacy of a statement required under  
9       this section. However, the committee may approve the  
10      statement or may recommend disapproval of any statement  
11      prepared by an agency or under contract for the committee  
12      that it determines inadequately covers those items contained  
13      in subsections (1)(a) through (1)(h).

14               (5) If the committee recommends disapproval of an  
15      economic impact statement, it shall give written notice of  
16      that fact to the governor. The governor shall either approve  
17      or disapprove the economic impact statement. The governor  
18      may not approve or disapprove a statement prior to receipt  
19      of notice from the committee.

20               (6) No agency may initiate or continue rulemaking  
21      proceedings once suspended for any rule substantially the  
22      same as the rule for which proceedings were suspended until  
23      approval of the applicable statement by the committee or the  
24      governor pursuant to subsection (5) or until expiration of 6  
25      months following suspension of the rule, whichever occurs

1    first. Following approval of the statement by the committee  
2    or the governor or the expiration of 6 months following  
3    suspension of the rule, the agency may again proceed with  
4    rulemaking. If no hearing has been scheduled on the proposed  
5    rule pursuant to 2-4-405(2), notice of opportunity for  
6    hearing shall be given in accordance with 2-4-302(4) and the  
7    proposed rule shall be subject to the provisions of that  
8    section."

9       Section 2. Section 2-4-305, MCA, is amended to read:  
10      "2-4-305. Requisites for validity -- authority and  
11      statement of reasons. (1) The agency shall consider fully  
12      written and oral submissions respecting the proposed rule.  
13      Upon adoption of a rule, an agency shall issue a concise  
14      statement of the principal reasons for and against its  
15      adoption, incorporating therein its reasons for overruling  
16      the considerations urged against its adoption. If  
17      substantial differences exist between the rule as proposed  
18      and as adopted and the differences have not been described  
19      or set forth in the adopted rule as that rule is printed in  
20      the Montana administrative register, the differences must be  
21      described in the statement of reasons for and against agency  
22      action. When no written or oral submissions have been  
23      received, an agency may omit the statement of reasons.

24       (2) Rules may not unnecessarily repeat statutory  
25      language. Whenever it is necessary to refer to statutory

1      language in order to convey the meaning of a rule  
2      interpreting the language, the reference shall clearly  
3      indicate that portion of the language which is statutory and  
4      the portion which is amplification of the language.

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

11               (4) Each rule proposed and adopted by an agency  
12      implementing a policy of a governing board or commission  
13      must include a citation to and description of the policy  
14      implemented. Each agency rule implementing a policy, as used  
15      in the definition set forth in 2-4-102(10), and the policy  
16      itself must be based on legal authority and otherwise comply  
17      with the requisites for validity of rules established by  
18      this chapter.

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

23               (6) Whenever by the express or implied terms of any  
24      statute a state agency has authority to adopt rules to  
25      implement, interpret, make specific, or otherwise carry out

1 the provisions of the statute, no rule adopted is valid or  
2 effective unless consistent and not in conflict with the  
3 statute and reasonably necessary to effectuate the purpose  
4 of the statute.

5 (7) No rule is valid unless adopted in substantial  
6 compliance with 2-4-302 or 2-4-303 and this section and  
7 unless notice of adoption thereof is published within 6  
8 months of the publishing of notice of the proposed rule. If  
9 an amended or supplemental notice of either proposed or  
10 final rulemaking, or both, unrelated to the suspension of a  
11 rule under 2-4-405, is published concerning the same rule,  
12 the 6-month limit must be determined with reference to the  
13 latest notice in all cases.

14 (8) If rulemaking proceedings are suspended by action  
15 of the administrative code committee under 2-4-405 prior to  
16 the expiration of the 6-month deadline provided for in  
17 subsection (7), the agency may, following approval of the  
18 economic impact statement by the committee or the governor  
19 or the expiration of 6 months from the action of the  
20 committee suspending the rule, proceed with rulemaking  
21 during the 6-month period following the approval of the  
22 economic impact statement or expiration of the period of  
23 suspension."

-End-

STATE OF MONTANA

REQUEST NO. 011-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 4, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 40 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:

Senate Bill 40 changes content requirements of economic impact statements under Montana Administrative Procedures Act.

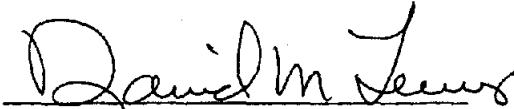
ASSUMPTIONS:

- 1) The additional information can be presented in a concise fashion not requiring substantially more pages per report filed.
- 2) The number and complexity of reports prepared can not be determined.

FISCAL IMPACT:

Additional costs would range from minimal to significant depending upon the number and complexity of the statements prepared and the number of rehearings required.

FISCAL NOTE2:L/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-10-83

Approved by Committee  
on State Administration

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7                  ADMINISTRATIVE RULEMAKING; AMENDING SECTIONS--2-4-305-AND  
8                  SECTION 2-4-405, MCA."  
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18 or repeal of a rule as proposed. The AS AN ALTERNATIVE, THE  
19 administrative code committee may also by contract, prepare  
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22 requested statement must include and the statement prepared  
23 by the committee may include an estimate of:  
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enforcing the rules.

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2 affected and  
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4 affected.  
5                 (i) a description of the classes of persons who will  
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7 will bear the costs of the proposed rule and classes that  
8 will benefit from the proposed rule;  
9                 (ii) a description of the probable economic impact of  
10 the proposed rule upon affected classes of persons and  
11 quantifying, to the extent practicable, that impact;  
12                 (iii) the probable costs to the agency and to any other  
13 agency of the implementation and enforcement of the proposed  
14 rule and any anticipated effect on state revenues;  
15                 (iv) an analysis comparing the costs and benefits of  
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17                 (v) an analysis that determines whether there are less  
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22 seriously considered by the agency and the reasons why they  
23 were rejected in favor of the proposed rule;  
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represents an efficient allocation of public and private

1 resources; and  
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 3 which subsections (1)(a) through (1)(c) are based and an  
 4 explanation of how the data was gathered.  
 5 (2) A request must be made by the committee prior to  
 6 the final agency action on the rule and suspends for not  
 7 more than 6 months any rulemaking proceeding under this  
 8 chapter then in progress; if a rulemaking hearing has  
 9 already been held or was scheduled by the agency prior to  
 10 the request or decision for a statement, a rehearing or  
 11 initial hearing must be held by the agency upon approval of  
 12 the statement by the administrative code committee or by the  
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 14 prepare a statement shall be sent to the agency and has the  
 15 same effect as a committee request to an agency. The  
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 17 publication in the register, filed with the administrative  
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 19 who have requested advance notice of the agency's rulemaking  
 20 proceedings within 3 months of the committee's request or  
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 22 least 20 days prior to the adoption, amendment, or repeal of  
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 24 prior to the hearing. The committee may withdraw its request  
 25 or decision for an economic impact statement at any time.

1 (3) If it is impossible to formulate such an estimate  
 2 the reasons for impossibility of formulation must be  
 3 published instead of the estimate.  
 4 (3) If it is impossible to formulate such an estimate,  
 5 the reasons for impossibility of formulation must be filed  
 6 and published instead of the economic impact statement.  
 7 (4) This section does not apply to rulemaking  
 8 pursuant to 2-4-303.  
 9 (5) The final adoption, amendment, or repeal of  
 10 a rule is not subject to challenge in any court as a result  
 11 of the inaccuracy or inadequacy of a statement required  
 12 under this section. However, the committee may approve the  
 13 statement or may recommend disapproval of any statement  
 14 prepared by an agency or under contract for the committee  
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 16 in subsections (1)(a) through (1)(c).  
 17 If the committee recommends disapproval of an  
 18 economic impact statement, it shall give written notice of  
 19 that fact to the governor. The governor shall either approve  
 20 or disapprove the economic impact statement. The governor  
 21 may not approve or disapprove a statement prior to receipt  
 22 of notice from the committee.  
 23 If no agency may initiate or continue rulemaking  
 24 proceedings once suspended for any substantially the  
 25 same reason the rule for which proceedings were suspended until

1 ~~approval-of-the-applicable-statement-by-the-committee-or-the~~  
 2 ~~governor-pursuant-to-subsection-(3) or until expiration of 6~~  
 3 ~~months-following-suspension-of-the-rates--whichever--occurs~~  
 4 ~~first--following-approval-of-the-statement-by-the-committee~~  
 5 ~~or-the-governor-or-the-expiration--of--6--months--following~~  
 6 ~~suspension--of--the--rates--the--agency--may--again--proceed--with~~  
 7 ~~rulemaking--if--no--hearing--has--been--scheduled--on--the--proposed~~  
 8 ~~rate--pursuant--to--2-4-385f2ix--notice--of--opportunity--for~~  
 9 ~~hearing--shall--be--given--in--accordance--with--2-4-382t4t--and--the~~  
 10 ~~proposed--rule--shall--be--subject--to--the--provisions--of--that~~  
 11 ~~section\*~~

12       Section-2-4-385v-MEAy-is-amended--to--read--  
 13       "2-4-385v--Requisites--for--validity-----authority-and  
 14 statement-of-reasons--(1)--The-agency-shall--consider--fully  
 15 written--and--oral-submissions-respecting-the-proposed-rates  
 16 upon-adoption-of-a-rate--an-agency--shall--issue--a--concise  
 17 statement--of--the--principal--reasons--for--and--against--its  
 18 adoption--incorporating-therein--its--reasons--for--overruling  
 19 the--considerations--urged--against--its--adoption--if  
 20 substantial-differences-exist-between-the-rate--as--proposed  
 21 and--as--adopted--and--the-differences-have-not-been-described  
 22 or-set-forth-in-the-adopted-rate-as-that-rate-is-printed--in  
 23 the-Montana-administrative-register--the-differences-must-be  
 24 described--in--the--statement-of-reasons--for--and--against--agency  
 25 actions--When--no--written--or--oral--submissions--have--been

1       received--an-agency--may--omit--the--statement--of--reasons--  
 2       {2}--Rates--may--not--unnecessarily--repeat--statutory  
 3 language--Whenever--it--is--necessary--to--refer--to--statutory  
 4 language--in--order--to--convey--the--meaning--of--a--rule  
 5 interpreting--the--language--the--reference--shall--clearly  
 6 indicate--that--portion--of--the--language--which--is--statutory--and  
 7 the--portion--which--is--amplification--of--the--language--  
 8       {3}--Each--proposed--and--adopted--rule--shall--include--a  
 9 citation--to--the--specific--grant--of--rulemaking--authority  
 10 pursuant--to--which--it--or--any--part--thereof--is--adopted--in  
 11 addition--each--proposed--and--adopted--rule--shall--include--a  
 12 citation--to--the--specific--section--or--sections--in--the--Montana  
 13 Code-Annotated--which--the--rule--purports--to--implement--  
 14       {4}--Each--rule--proposed--and--adopted--by--an--agency  
 15 implementing--a--policy--of--a--governing--board--or--commission  
 16 must--include--a--citation--to--and--description--of--the--policy  
 17 implemented--Each--agency--rule--implementing--a--policy--as--used  
 18 in--the--definition--set--forth--in--2-4-102t10jv--and--the--policy  
 19 itself--must--be--based--on--legal--authority--and--otherwise--comply  
 20 with--the--requisites--for--validity--of--rules--established--by  
 21 this--chapter--  
 22       {5}--To--be--effective--each--substantive--rule--adopted  
 23 must--be--within--the--scope--of--authority--conferred--and--in  
 24 accordance--with--standards--prescribed--by--other--provisions--of  
 25 law--

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

8        (7)--No--rule--is--valid--unless--adopted--in--substantial  
9        compliance--with--2--4--382--or--2--4--383--and--this--section--end  
10      unless--notice--of--adoption--thereof--is--published--within--6  
11      months--of--the--publishing--of--notice--of--the--proposed--rules--if  
12      an--amended--or--supplemental--notice--of--either--proposed--or  
13      final--rulemaking--or--both--unrelated--to--the--organization--of--a  
14      committee--under--2--4--405x--is--published--concerning--the--same--rule,  
15      the--6--month--limit--must--be--determined--with--reference--to--the  
16      latest--notice--in--all--cases.

17        (8)--If--rulemaking--proceedings--are--suspended--by--action  
18        of--the--administrative--code--committee--under--2--4--405--prior--to  
19        the--expiration--of--the--6--month--deadline--provided--for--in  
20        subsection--(7)--the--agency--may--following--approval--of--the  
21        economic--impact--statement--by--the--committee--or--the--governor  
22        or--the--expiration--of--6--months--from--the--action--of--the  
23        committee--suspending--the--rules--proceed--with--rulemaking  
24        during--the--6--month--period--following--the--approval--of--the  
25        economic--impact--statement--or--expiration--of--the--period--of

1        **suspensions\***

-End-

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7               (a) a description of the classes of persons who will  
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20              (d) an analysis comparing the costs and benefits of  
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32              (g) a determination as to whether the proposed rule  
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 23 the rule. If a hearing is held, it must be published 20 days  
 24 prior to the hearing. The committee may withdraw its request  
 25 or decision for an economic impact statement at any time.

1 (3) If it is impossible to formulate such an estimate  
 2 the reasons for impossibility of formulation must be  
 3 published instead of the estimate.

4 (3) If it is impossible to formulate such an estimate,  
 5 the reasons for impossibility of formulation must be filed  
 6 and published instead of the economic impact statement.

7 (4)(3)(4) This section does not apply to rulemaking  
 8 pursuant to 24-303.

9 (5)(4)(5) The final adoption, amendment, or repeal of  
 10 a rule is not subject to challenge in any court as a result  
 11 of the inaccuracy or inadequacy of a statement required  
 12 under this section. However, the committee may approve the  
 13 statement or may recommend disapproval of any statement  
 14 prepared by an agency or under contract for the committee  
 15 that it determines inadequately covers those items contained  
 16 in subsections (1) through (1)(h).

17 (5) If the committee recommends disapproval of an  
 18 economic impact statement, it shall give written notice of  
 19 that fact to the governor. The governor shall either approve  
 20 or disapprove the economic impact statement. The governor  
 21 may not approve or disapprove a statement prior to receipt  
 22 of notice from the committee.

23 (6) No agency may initiate or continue rulemaking  
 24 proceedings once suspended for any rule substantially the  
 25 same as the rule for which proceedings were suspended until

1 approval-of-the-noticeable-statement-by-the-committee-or-the  
 2 governor-pursuant-to-subsection-(1) or until expiration-of-6  
 3 months-following-suspension-of-the-rate--which-ever-occurs  
 4 first--following-approval-of-the-statement-by-the-committee  
 5 or-the-governor-or-the-expiration-of-6-months-following  
 6 suspension-of-the-rate-the-agency-may-again-proceed-with  
 7 rulemaking-if-no-hearing-has-been-scheduled-on-the-proposed  
 8 rule pursuant-to-2-4-382(4)-notice-of-opportunity-for  
 9 hearing-shall-be-given-in-accordance-with-2-4-382(4)-and-the  
 10 proposed-rule-shall-be-subject-to-the-provisions-of-that  
 11 section"

Section-2---Section-2-4-305-MCA-is-amended--to-read  
 12 "2-4-305---Requisites--for--validity----authority-and  
 13 statement-of-reasons---(1)-The-agency-shall--consider--fatty  
 14 written--and--oral--submissions-respecting-the-proposed-rates  
 15 Upon-adoption-of-a-rate-by-an-agency--shall--issue--a--concrete  
 16 statement--of--the--principal--reasons--for--and--against--its  
 17 adoption--incorporating-therein--its--reasons--for--overruling  
 18 the--considerations--urged--against--its--adoption--if  
 19 substantial-differences-exist-between-the-rate-as--proposed  
 20 and--as--adopted--and--the--differences--have--not--been--described  
 21 or--set--forth--in--the--adopted--rate--as--that--rate--is--printed--in  
 22 the--Montana-administrative-register--the--differences--must--be  
 23 described--in--the--statement--of--reasons--for--and--against--agency  
 24 actions--When--no--written--or--oral--submissions--have--been

1 received--an--agency--may--omit--the--statement--of--reasons--  
 2 (2)--Rates--may--not--unnecessarily--repeat--statutory  
 3 language--Whenever--it--is--necessary--to--refer--to--statutory  
 4 language--in--order--to--convey--the--meaning--of--a--rule  
 5 interpreting--the--language--the--reference--shall--clearly  
 6 indicate--that--portion--of--the--language--which--is--statutory--and  
 7 the--portion--which--is--amplification--of--the--language  
 8 (3)--Each--proposed--and--adopted--rule--shall--include--a  
 9 citation--to--the--specific--grant--of--rulemaking--authority  
 10 pursuant--to--which--it--or--any--part--thereof--is--adopted--in  
 11 addition--each--proposed--and--adopted--rule--shall--include--a  
 12 citation--to--the--specific--section--or--sections--in--the--Montana  
 13 Code--Annotated--which--the--rule--purports--to--implement  
 14 (4)--Each--rule--proposed--and--adopted--by--an--agency  
 15 implementing--a--policy--of--a--governing--board--or--commission  
 16 must--include--a--citation--to--and--description--of--the--policy  
 17 implemented--Each--agency--rule--implementing--a--policy--as--used  
 18 in--the--definition--set--forth--in--2-4-302(10)--and--the--policy  
 19 itself--must--be--based--on--legal--authority--and--otherwise--comply  
 20 with--the--requisites--for--validity--of--rates--established--by  
 21 this--chapter  
 22 (5)--To--be--effective--each--substantive--rule--adopted  
 23 must--be--within--the--scope--of--authority--conferred--and--in  
 24 accordance--with--standards--prescribed--by--other--provisions--of  
 25 law

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

8        17) -- No -- rule -- is -- valid -- unless -- adopted -- in -- substantial  
 9        compliance -- with -- 2 -- 4 -- 302 -- or -- 2 -- 4 -- 303 -- and -- this -- section -- and  
 10      unless -- notice -- of -- adoption -- thereof -- is -- published -- within -- 6  
 11      months -- of -- the -- publishing -- of -- notice -- of -- the -- proposed -- rule -- if  
 12      an -- amended -- or -- supplemental -- notice -- of -- either -- proposed -- or  
 13      final -- rulemaking -- or -- both -- is -- correlated -- to -- the -- suspension -- of -- a  
 14      rule -- under -- 2 -- 4 -- 483x -- is -- published -- concerning -- the -- same -- rule --,  
 15      the -- 6 -- month -- limit -- must -- be -- determined -- with -- reference -- to -- the  
 16      latest -- notice -- in -- all -- cases --.

17        18) -- if -- rulemaking -- proceedings -- are -- suspended -- by -- action  
 18      of -- the -- administrative -- code -- committee -- under -- 2 -- 4 -- 485 -- prior -- to  
 19      the -- expiration -- of -- the -- 6 -- month -- deadline -- provided -- for -- in  
 20      subsection -- first -- the -- agency -- may -- following -- approval -- of -- the  
 21      economic -- impact -- statement -- by -- the -- committee -- or -- the -- governor  
 22      or -- the -- expiration -- of -- 6 -- months -- from -- the -- action -- of -- the  
 23      committee -- suspending -- the -- rules -- proceed -- with -- rulemaking  
 24      during -- the -- 6 -- month -- period -- following -- the -- approval -- of -- the  
 25      economic -- impact -- statement -- or -- expiration -- of -- the -- period -- of

1        suspension\*

-End-

STATE ADMINISTRATION COMMITTEE  
MARCH 23, 1983  
SENATE BILL 40

1. Page 3, line 5.

Following: "request"

Insert: "to an agency for a statement or a decision to contract for the preparation of a statement"

2. Page 3, lines 16 and 17.

Strike: "filed on line 16 through ," on line 17

3. Page 3, lines 18 through 20.

Strike: , on line 18 through "proceedings" on line 20

4. Page 4, lines 4 through 6.

Strike: "IF" on line 4 through . on line 6

Insert: "Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, the statement must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee if the statement is prepared under contract by the committee and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings."

AND AS AMENDED BE CONCURRED IN

April 18

83  
19

FREE CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 40  
(Report No. 1)

Mr. President:

We, your Free Conference Committee on Senate Bill 40, met and considered:

House State Administration Committee amendments of March 23, 1983.

We recommend as follows:

That the Senate accede to all House State Administration Committee amendments;

That Senate Bill 40 be further amended as specified in Clerical Instructions 1 through 3; and

That this Free Conference Committee Report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Page 1, line 16

Strike: "designated by the committee"

2) Page 4, line 15

Following: ","

Insert: "a notice indicating where a copy of"

Following: "STATEMENT"

Insert: "may be obtained"

3) Page 8

Following: line 15

Insert: "Section 2. An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in 2-4-405 satisfies the provisions of 2-4-405."

FOR THE SENATE

Story  
STORY, CHAIR

Stimatz  
STIMATZ

Tveit  
TVEIT

FOR THE HOUSE

Harper  
HARPER, CHAIR

Schultz  
SCHULTZ

Spaeth  
SPAETH

SENATE BILL NO. 40

INTRODUCED BY STORY

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 LAW RELATING TO STATEMENTS OF ECONOMIC IMPACT OF PROPOSED  
7 ADMINISTRATIVE RULEMAKING; AMENDING SECTIONS--2-4-305-AND  
8 SECTION 2-4-405, MCA;"

**SECTION FIVE. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:**

Section 1. Section 2-4-405, MCA, is amended to read:

\*2-4-405. Estimate--of--economic Economic impact statement. (1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency designated by the committee shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The AS AN ALTERNATIVE, THE administrative code committee may also, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include an estimate of:

(a)--the--cost--to--the--state--of--administering--and enforcing the rules.

1       fbj--the--aggregate--cost--of--compliance--to--all--persons  
2       affected--and  
3            fcj--any--economic--benefit--of--compliance--to--all--persons  
4       affected--  
5            fa1--a--description--of--the--classes--of--persons--who--will  
6       be--affected--by--the--proposed--rule--including--classes--that  
7       will--bear--the--costs--of--the--proposed--rule--and--classes--that  
8       will--benefit--from--the--proposed--rule;  
9           fb1--a--description--of--the--probable--economic--impact--of  
10      the--proposed--rule--upon--affected--classes--of--persons--and  
11      quantifying--to--the--extent--practicable--that--impact;  
12           fc1--the--probable--costs--to--the--agency--and--to--any--other  
13      agency--of--the--implementation--and--enforcement--of--the--proposed  
14      rule--and--any--anticipated--effect--on--state--revenues;  
15           fd1--an--analysis--comparing--the--costs--and--benefits--of  
16      the--proposed--rule--to--the--costs--and--benefits--of--inaction;  
17           fe1--an--analysis--that--determines--whether--there--are--less  
18      costly--or--less--intrusive--methods--for--achieving--the--purpose  
19      of--the--proposed--rule;  
20           ff1--an--analysis--of--any--alternative--methods--for  
21      achieving--the--purpose--of--the--proposed--rule--that--were  
22      seriously--considered--by--the--agency--and--the--reasons--why--they  
23      were--rejected--in--favor--of--the--proposed--rule;  
24           fo1--a--determination--as--to--whether--the--proposed--rule  
25      represents--an--efficient--allocation--of--public--and--private

1 resources and  
 2       1(b) a quantification or description of the data upon  
 3 which subsections (1)(a) through (1)(g) are based and an  
 4 explanation of how the data was gathered.

5       (2) A request to AN AGENCY FOR A STATEMENT OR A  
 6 DECISION TO CONTRACT FOR THE PREPARATION OF A STATEMENT must  
 7 be made by the committee prior to the final agency action on  
 8 the rule and amends for not more than 6 months any  
 9 rulemaking proceedings under this chapter then in progress  
 10 if a rulemaking hearing has already been held or was  
 11 scheduled by the agency after the request or decision for  
 12 a statement is re-hearing or initial hearing must be held by  
 13 the agency upon approval of the statement by the  
 14 administrative code committee or by the governor. Written  
 15 notice of the committee's decision to prepare a statement  
 16 shall be sent to the agency and has the same effect as a  
 17 committee request to an agency. The statement must be filed  
 18 with the secretary of state for publication in the register  
 19 filed with the administrative code committee and with the  
 20 governor and mailed to persons who have requested advance  
 21 notice of the agency's rulemaking proceedings within 3  
 22 months of the committee's request or decision. The statement  
 23 must be published and mailed at least 20 days prior to the  
 24 adoption, amendment or repeal of the rule if a hearing is  
 25 held, it must be published 20 days prior to the hearing. The

1 committee may withdraw its request or decision for an  
 2 economic impact statement at any time.  
 3       ¶¶¶¶¶ If it is impossible to formulate such an estimate,  
 4 the reasons for impossibility of formulation must be  
 5 published instead of the estimate.  
 6       ¶¶¶¶¶ If it is impossible to formulate such an estimate,  
 7 the reasons for impossibility of formulation must be filed  
 8 and published instead of the economic impact statement upon  
 9 receipt of an impact statement. The committee shall  
 10 determine the sufficiency of the statement. If the committee  
 11 determines that the statement is insufficient, the committee  
 12 may return it to the agency or other person who prepared the  
 13 statement and request that corrections or amendments be  
 14 made. If the committee determines that the statement is  
 15 sufficient, the statement must be filed with the secretary  
 16 of state for publication in the register by the agency  
 17 preparing the statement or by the committee if the statement  
 18 is prepared under contract by the committee and must be  
 19 mailed to persons who have registered advance notice to the  
 20 agency's rulemaking proceedings.  
 21       ¶¶¶¶¶ This section does not apply to rulemaking  
 22 pursuant to 2-4-303.  
 23       ¶¶¶¶¶ The final adoption, amendment, or repeal of  
 24 a rule is not subject to challenge in any court as a result  
 25 of the inaccuracy or inadequacy of a statement required

1 under this section. However, the committee may approve the  
 2 statement or may recommend disapproval of the statement  
 3 if it is not adequately covered by the items contained  
 4 in subsections fifteen through fifteen.  
 5

6 If the committee recommends disapproval of an  
 7 economic impact statement, it shall give written notice of  
 8 that fact to the governor. The governor shall either approve  
 9 or disapprove the economic impact statement. The governor  
 10 may not approve or disapprove a statement prior to receipt  
 11 of notice from the committee.

12 If an agency may initiate or continue rulemaking  
 13 proceedings once suspended for any rule substantially the  
 14 same as the rule for which proceedings were suspended until  
 15 adoption of the applicable statement by the committee or the  
 16 governor pursuant to subsection fifteen or until expiration of six  
 17 months following suspension of the rule which ever occurs  
 18 first, following approval of the statement by the committee  
 19 or the governor or the expiration of six months following  
 20 issuance of the rule, the agency may again proceed with  
 21 rulemaking if no hearing has been scheduled on the proposed  
 22 rule pursuant to section 24-305(f)(2)(x) notice of opportunity for  
 23 hearings shall be given in accordance with section 24-302(f) and the  
 24 proposed rule shall be subject to the provisions of that  
 25 section."

1 Section 2-4-305, MCA, is amended to read:  
 2 "2-4-305--Requisites--for--validity----authority-and  
 3 statement-of-reasons--(f)--The agency shall consider fully  
 4 written--and--oral--submissions--respecting--the--proposed--rule.  
 5 Upon adoption of a rule by an agency shall issue a concise  
 6 statement--of--the--principal--reasons--for--and--against--its  
 7 adoption, incorporating therein its reasons for overruling  
 8 the--considerations--urged--against--its--adoption--if  
 9 substantial differences exist between the rule as proposed  
 10 and--as--adopted--and--the--differences--have--not--been--described  
 11 or set forth in the adopted rule as that rule is printed in  
 12 the Montana Administrative Register. The differences must be  
 13 described in the statement of reasons for and against agency  
 14 action.--When no written--or--oral--submissions--have--been  
 15 received by an agency 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 proposed and adopted rule shall include a  
 23 citation--to--the--specific--grant--of--rulemaking--authority  
 24 pursuant to which it or any part thereof is adopted in  
 25 addition--each--proposed--and--adopted--rule--shall--include--a

1 citation-to-the-specific-section-or-sections-in-the--Montana  
 2 Code-Annotated-which-the-rate-purports-to-implement.  
 3       f4)---Each--rate--proposed--and--adopted--by--an--agency  
 4 implementing-a-policy-of-a--governing--board--or--commission  
 5 must--include--a--citation--to-and-description-of-the-policy  
 6 implemented=Each-agency-rate-implementing-a-policy,-as-used  
 7 in-the-definition-set-forth-in-2-4-102(f)(3),-and--the--policy  
 8 itself-must-be-based-on-legal-authority-and-otherwise-comply  
 9 with--the--requirements--for--validity-of-rates-established-by  
 10 this-chapter.  
 11       f5)---To-be-effective--each--substantive--rate--adopted  
 12 must--be--within--the--scope--of--authority-conferred-and-in  
 13 accordance-with-standards-prescribed-by-other-provisions--of  
 14 tew.  
 15       f6)---Whenever--by--the--express-or--implied-terms-of-any  
 16 statute-a-state-agency--has--authority--to--adopt--rates--to  
 17 implement--interpret--make-specific--or--otherwise-carry-out  
 18 the-provisions-of-the-statute--no--rate-adopted-is--valid--or  
 19 effective--unless--consistent--and--not-in-conflict-with-the  
 20 statute-and-reasonably-necessary-to-effectuate--the--purpose  
 21 of-the-statute.  
 22       f7)---No--rate--is--valid--unless--adopted-in-substantial  
 23 compliance-with-2-4-302-or--2-4-303--and--this--section--and  
 24 unless--notice--of--adoption--thereof--is-published-within-6  
 25 months-of-the-publishing-of-notice-of-the-proposed-rate--if

1 on--amended--or--supplemented--notice--of--either--proposed--or  
 2 final--ratemaking--or--both--unrelated-to-the-suspension-of--a  
 3 rule--under--2-4-605x-is-published-concerning-the-same-rate  
 4 the-6-month-limit-must-be-determined-with-reference--to--the  
 5 latest--notice-in-all-cases.  
 6       f8)---If--ratemaking--proceedings--are--suspended--by--action  
 7 of--the--administrative--code--committee--under--2-4-605--prior--to  
 8 the--expiration--of--the--6-month--deadline--provided--for--in  
 9 subsection--f7)--the--agency--may--following--an--exist--of--the  
 10 economic--impact--statement--by--the--committee--or--the--governor  
 11 or--the--expiration--of--6--months--from--the--action--of--the  
 12 committee--suspending--the--rule--executed--with--ratemaking  
 13 during--the--6-month--period--following--the--approxi--of--the  
 14 economic--impact--statement--or--expiration--of--the--period--of  
 15 suspension."

-End-

## SENATE BILL NO. 40

INTRODUCED BY STORY

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO STATEMENTS OF ECONOMIC IMPACT OF PROPOSED ADMINISTRATIVE RULEMAKING; AMENDING SECTIONS--2-4-305 AND SECTION 2-4-405, MCA."

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

Section 1. Section 2-4-405, MCA, is amended to read:

"2-4-405. Estimate---of---economic Economic impact statement. (1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency designated by the committee shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The AS AN ALTERNATIVE, THE administrative code committee may also, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include an estimate of:

(a) the cost to the state of administering and enforcing the rules;

(b) the aggregate cost of compliance to all persons affected and (c) any economic benefit of compliance to all persons affected.

(d) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(e) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(f) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(g) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(h) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(i) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(j) a determination as to whether the proposed rule represents an efficient allocation of public and private

1 resources; and

2 (b) a quantification or description of the data upon  
 3 which subsections (1)(a) through (1)(g) are based and an  
 4 explanation of how the data was gathered.

5 (2) A request to an agency for a statement or a  
 6 decision to contract for the preparation of a statement must  
 7 be made by the committee prior to the final agency action on  
 8 the rule and suspends for not more than 6 months any  
 9 rulemaking proceedings under this chapter then in progress  
 10 if a rulemaking hearing has already been held or was  
 11 scheduled by the agency prior to the request or decision for  
 12 a statement or rehearing or initial hearing must be held by  
 13 the agency upon approval of the statement by the  
 14 administrative code committee or by the governor. Written  
 15 notice of the committee's decision to prepare a statement  
 16 shall be sent to the agency and has the same effect as a  
 17 committee request to an agency. The statement must be filed  
 18 with the secretary of state for publication in the registers  
 19 filed with the administrative code committee and with the  
 20 governor and mailed to persons who have requested advance  
 21 notice of the agency's rulemaking proceedings within 3  
 22 months of the committee's request or decision. The statement  
 23 must be published and mailed at least 20 days prior to the  
 24 adoption, amendment, or repeal of the rule. If a hearing is  
 25 held, it must be published 20 days prior to the hearing. The

1 committee may withdraw its request or decision for an  
 2 economic impact statement at any time.

3 (3) If it is impossible to formulate such an estimate,  
 4 the reasons for impossibility of formulation must be  
 5 published instead of the estimate.

6 (3) If it is impossible to formulate such an estimate,  
 7 the reasons for impossibility of formulation must be filed  
 8 and published instead of the economic impact statement. Upon  
 9 receipt of an impact statement, the committee shall  
 10 determine the sufficiency of the statement. If the committee  
 11 determines that the statement is insufficient, the committee  
 12 may return it to the agency or other person who prepared the  
 13 statement and request that corrections or amendments be  
 14 made. If the committee determines that the statement is  
 15 sufficient, a notice indicating where a copy of the  
 16 statement may be obtained must be filed with the secretary  
 17 of state for publication in the register by the agency  
 18 preparing the statement or by the committee if the statement  
 19 is prepared under contract by the committee and must be  
 20 mailed to persons who have registered advance notice to the  
 21 agency's rulemaking proceedings.

22 (4) This section does not apply to rulemaking  
 23 pursuant to 2-4-303.

24 (5) The final adoption, amendment, or repeal of  
 25 a rule is not subject to challenge in any court as a result

1 of the inaccuracy or inadequacy of a statement required  
 2 under this section. ~~However, the committee may approve the~~  
 3 statement or may recommend disapproval of any statement  
 4 assessed by an agency or under contract for the committee  
 5 that it determines inadequately covers those items contained  
 6 in subsections 11 through 15.  
 7 If the committee recommends disapproval of an

8 economic impact statement, it shall give written notice of  
 9 that fact to the governor. The governor shall either approve  
 10 or disapprove the economic impact statement. The governor  
 11 may not approve or disapprove a statement prior to receipt  
 12 of notice from the committee.

13 If no agency may initiate or continue rulemaking  
 14 proceedings once suspended for any reason substantially the  
 15 same as the rule for which proceedings were suspended until  
 16 approval of the applicable statement by the committee or the  
 17 governor pursuant to subsection 15; or until expiration of 6  
 18 months following suspension of the rule whichever occurs  
 19 first; following approval of the statement by the committee  
 20 or the governor or the expiration of 6 months following  
 21 suspension of the rule, the agency may again proceed with  
 22 rulemaking if no hearing has been scheduled on the proposed  
 23 rule pursuant to 2-4-405(2)(x); notice of opportunity for  
 24 hearing shall be given in accordance with 2-4-302(f) and the  
 25 proposed rule shall be subject to the provisions of that

1 sections"

2 Section 24-305, --Section 24-305, --is amended to read:  
 3 "24-305. --Requisites for validity----authority--and  
 4 statement--of--reasons--(1) the agency shall consider fully  
 5 written and oral submissions respecting the proposed rule.  
 6 Upon adoption of a rule, the agency shall issue a concise  
 7 statement of the principal reasons for and against its  
 8 adoption, incorporating therein its reasons for overruling  
 9 the considerations urged against its adoption. If  
 10 substantial differences exist between the rule as proposed  
 11 and as adopted and the differences have not been described  
 12 or set forth in the adopted rule as that rule is printed in  
 13 the Montana Administrative Register, the differences must be  
 14 described in the statement of reasons for and against agency  
 15 action. When no written or oral submissions have been  
 16 received, an agency may omit the statement of reasons.

17 f24--Rules--may--not--unnecessarily--repeat--statutory  
 18 language whenever it is necessary--to--refer--to--statutory  
 19 language--in--order--to--convey--the--meaning--of--a--rule  
 20 interpreting--the--language--the--reference--shall--clearly  
 21 indicate that portion of the language which is statutory and  
 22 the portion which is amplification of the language.  
 23 f34--Each--proposed--and--adopted--rule--shall--include--a  
 24 citation to the specific grant of rulemaking authority  
 25 pursuant to which it or any part thereof is adopted in

1 addition, each proposed and adopted rule shall include a  
 2 citation to the specific section or sections in the Montana  
 3 Code Annotated which the rule purports to implement.  
 4 ~~Each~~ Each rule proposed and adopted by an agency  
 5 implementing a policy of a governing board or commission  
 6 must include a citation to and description of the policy  
 7 implemented. Each agency rule implementing a policy as used  
 8 in the definition set forth in 2-4-402(1)(y) and the policy  
 9 itself must be based on legal authority and otherwise comply  
 10 with the requisites for validity of rules established by  
 11 this chapter.

12 ~~to~~ to be effective each substantive rule adopted  
 13 must be within the scope of authority conferred and in  
 14 accordance with standards prescribed by other provisions of  
 15 law.

16 ~~Whenever~~ by the express or implied terms of any  
 17 statute a state agency has authority to adopt rules to  
 18 implement, interpret, make specific, or otherwise carry out  
 19 the provisions of the statute, no rule adopted is valid or  
 20 effective unless consistent and not in conflict with the  
 21 statute and reasonably necessary to effectuate the purpose  
 22 of the statute.

23 ~~No~~ No rule is valid unless adopted in substantial  
 24 compliance with 2-4-302 or 2-4-303 and this section and  
 25 unless notice of adoption thereof is published within 6

1 months of the publishing of notice of the proposed rules if  
 2 an amended or supplemental notice of either proposed or  
 3 final rulemaking or both unrelated to the suspension of a  
 4 rule under 2-4-405 is published concerning the same rule  
 5 the 6 month limit must be determined with reference to the  
 6 latest notice in all cases.  
 7 ~~If rulemaking proceedings are suspended by action~~  
 8 ~~of the administrative code committee under 2-4-405 prior to~~  
 9 ~~the expiration of the 6 month deadline provided for in~~  
 10 ~~subsection 6 the agency may following approval of the~~  
 11 ~~economic impact statement by the committee or the governor~~  
 12 ~~or the expiration of 6 months from the action of the~~  
 13 ~~committee suspending the rule proceed with rulemaking~~  
 14 ~~during the 6 month period following the approval of the~~  
 15 ~~economic impact statement or expiration of the period of~~  
 16 ~~suspension.~~

17 SECTION 2. AN ENVIRONMENTAL IMPACT STATEMENT PREPARED  
 18 PURSUANT TO 75-1-201 THAT INCLUDES AN ANALYSIS OF THE  
 19 FACTORS LISTED IN 2-4-405 SATISFIES THE PROVISIONS OF  
 20 2-4-405.

-End-