SENATE BILL NO. 45

INTRODUCED BY STIMATZ

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

January 3, 1983	Introduced and referred to Committee on State Administration.
January 22, 1983	Committee recommend bill do pass as amended. Report adopted.
January 24, 1983	Bill printed and placed on members' desks.
January 25, 1983	Second reading, do pass.
January 26, 1983	Correctly engrossed.
January 27, 1983	Third reading, passed. Ayes, 45; Noes, 0. Transmitted to House.
IN THE H	OUSE
January 28, 1983	Introduced and referred to Committee on State Administration.
February 9, 1983	Committee recommend bill be concurred in as amended. Report adopted.
Pebruary 11, 1983	Second reading, pass consideration.
February 12, 1983	On motion, consideration passed until 46th legislative day.
February 23, 1983	Second reading, concurred in.
March 1, 1983	Third reading, concurred in.

IN THE GENATE

March	2,	1983	Returned to Senate with amendments.
March	4,	1983	Second reading, amendments concurred in.
March	7,	1983	Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

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SENATE BILL NO. 45

INTRODUCED BY STIMATZ

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

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A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE NECESSITY FOR ADMINISTRATIVE RULES BE DEMONSTRATED IN THE RULEMAKING RECORD OF ADMINISTRATIVE AGENCIES AND TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW THAT RECORD; AMENDING SECTIONS 2-4-305 AND 2-4-402, MCA."

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

Section 1. Section 2-4-305, MCA, is amended to read:

#2-4-305. Requisites for validity — authority and
statement of reasons. (1) The agency shall consider fully
written and oral submissions respecting the proposed rule.

Upon adoption of a rule, an agency shall issue a concise
statement of the principal reasons for and against its
adoption, incorporating therein its reasons for overruling
the considerations urged against its adoption. If
substantial differences exist between the rule as proposed
and as adopted and the differences have not been described
or set forth in the adopted rule as that rule is printed in
the Montana administrative register, the differences must be
described in the statement of reasons for and against agency
action. When no written or oral submissions have been

received, an agency may omit the statement of reasons.

- 2 (2) Rules 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.
 - (3) Each proposed and adopted rule shall—include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each proposed and adopted rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.
 - (4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy, as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by 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.

INTRODUCED BILL

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless:

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- 6 (a) consistent and not in conflict with the statute;
 7 and
- the statute. Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data. views comments and testimony considered by the agency.
 - (7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.*
- 21 Section 2. Section 2-4-402, NCA, is amended to read:
 22 "2-4-402. Powers of the committee duty to review
 23 rules. (1) The committee shall review all proposed rules
 24 filed with the secretary of state.
 - (2) Rules proposed by the department of revenue may be

1 reviewed only: in regard to the procedural requirements of 2 the Montana Administrative Procedure Act.

(3) The committee may:

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and testimony considered by the agency and advise the agency

whethers in the judgment of the committees a rule is

reasonably necessary to effectuate the purpose of the

statute:

tet(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

13 this require that a rulemaking hearing be held: in
14 accordance with the provisions of 2-4-302 through 2-4-305;
15 telid: institute, intervene in, or otherwise

16 participate in proceedings involving this chapter in the

17 state and federal courts and administrative agencies;

18 (d)(e) review the incidence and conduct of 19 administrative proceedings under this chapter."

-End-

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48th Legislature SB 0045/02

Approved by Committee on State Administration

SENATE BILL NO. 45

INTRODUCED BY STIMATZ

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE NECESSITY FOR ADMINISTRATIVE RULES BE DEMONSTRATED IN THE RULEMAKING RECORD OF ADMINISTRATIVE AGENCIES AND TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW THAT RECORD; AMENDING SECTIONS 2-4-305 AND 2-4-402, MCA."

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SB 0045/02

1 received, an agency may omit the statement of reasons.

2 (2) Rules 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 implemented. Each agency rule implementing a policy, as used 17 18 in the definition set forth in 2-4-102(10), and the policy 19 itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by 20 21 this chapter.
 - (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

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- 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:
- 6 <u>(a)</u> consistent and not in conflict with the statute;
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- (b) reasonably necessary to effectuate the purpose of the statute. Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data. yiews, comments, and OR testimony SUBMITTED BY THE PUBLIC OR THE AGENCY AND considered by the agency.
- (7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases."
- Section 2. Section 2-4-402. MCA: is amended to read:

 "2-4-402. Powers of the committee duty to review

 rules. (1) The committee shall review all proposed rules

 filed with the secretary of state.

- 1 (2) Rules proposed by the department of revenue may be 2 reviewed only in regard to the procedural requirements of the Bontana Administrative Procedure Act.
 - (3) The committee may:

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- 5 (a) review the written and oral datas views comments:
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 7 whether: in the judgment of the committee: a rule is
 8 reasonably necessary to effectuate the purpose of the
 9 statute:
 - (a)(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;
- 14 (b)(c) require that a rulemaking hearing be held in
 15 accordance with the provisions of 2-4-302 through 2-4-305;
 16 (c)(d) institute, intervene in, or otherwise
 17 participate in proceedings involving this chapter in the
 18 state and federal courts and administrative agencies;
- 19 (d)(e) review the incidence and conduct of
 20 administrative proceedings under this chapter.**

-End-

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8 THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW THAT RECORD;
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- received, an agency may omit the statement of reasons.
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- 18 in the definition set forth in 2-4-102(10), 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
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- 24 accordance with standards prescribed by other provisions of

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(b)(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305; (c)(d) institute, intervene in, or otherwise

17 participate in proceedings involving this chapter in the

18 state and federal courts and administrative agencies;

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-End-

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48th Legislature S8 0045/03

58 0045/03

1	SENATE	BILL	NO.	4

INTRODUCED BY STIMATA

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- (a) __eaview_the_written_end_orel_detex_wiewar_ecomectize 5 and the strong representation of the control of the whetherwaringsthermindowentarofactheraconnitteeswarenartwiteis ceasonably==necessary==to==effectunte==tbs==puconse==of==tbs STATUTE REQUEST AND OBTAIN AN AGENCY'S RULEMAKING RECORDS FOR THE PURPOSE OF REVIEWING COMPLIANCE WITH 2-4-3051 10
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-End-

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SB 45