

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 HOUSE

January 28, 1983	Introduced and referred to Committee on State Administration.
February 9, 1983	Committee recommend bill be concurred in as amended. Report adopted.
February 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 SENATE

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.

SENATE BILL NO. 45INTRODUCED 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."

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) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and 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.

(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.

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:

(a) consistent and not in conflict with the statute; and

(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, 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."

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.

(2) Rules proposed by the department of revenue may be

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

(3) The committee may:

(a) review the written and oral data, views, comments, and testimony considered by the agency and advise the agency whether, in the judgment of the committee, a rule is reasonably necessary to effectuate the purpose of the statute;

(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;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

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

-End-

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."

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) Rules may not unnecessarily repeat statutory  
language. Whenever it is necessary to refer to statutory  
language in order to convey the meaning of a rule  
interpreting the language, the reference shall clearly  
indicate that portion of the language which is statutory and  
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.

(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.

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 (a) consistent and not in conflict with the statute;  
7 and

8 (b) reasonably necessary to effectuate the purpose of  
9 the statute. Such reasonable necessity must be demonstrated  
10 in the agency's notice of proposed rulemaking and in the  
11 written and oral data, views, comments, and OR testimony  
12 SUBMITTED BY THE PUBLIC OR THE AGENCY AND considered by the  
13 agency.

14 (7) No rule is valid unless adopted in substantial  
15 compliance with 2-4-302 or 2-4-303 and this section and  
16 unless notice of adoption thereof is published within 6  
17 months of the publishing of notice of the proposed rule. If  
18 an amended or supplemental notice of either proposed or  
19 final rulemaking, or both, is published concerning the same  
20 rule, the 6-month limit must be determined with reference to  
21 the latest notice in all cases."

22 Section 2. Section 2-4-402, MCA, is amended to read:

23 "2-4-402. Powers of the committee -- duty to review  
24 rules. (1) The committee shall review all proposed rules  
25 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  
3 the Montana Administrative Procedure Act.

4 (3) The committee may:

5 (a) review the written and oral data, views, comments,  
6 and testimony considered by the agency and advise the agency  
7 whether, in the judgment of the committee, a rule is  
8 reasonably necessary to effectuate the purpose of the  
9 statute;

10 (a)(b) prepare written recommendations for the  
11 adoption, amendment, or rejection of a rule and submit those  
12 recommendations to the department proposing the rule and  
13 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-

## 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."

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) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and 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.

(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.

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 (a) consistent and not in conflict with the statute;  
7 and

8 (b) reasonably necessary to effectuate the purpose of  
9 the statute. Such reasonable necessity must be demonstrated  
10 in the agency's notice of proposed rulemaking and in the  
11 written and oral data, views, comments, and OR testimony  
12 SUBMITTED BY THE PUBLIC OR THE AGENCY AND considered by the  
13 agency.

14 (7) No rule is valid unless adopted in substantial  
15 compliance with 2-4-302 or 2-4-303 and this section and  
16 unless notice of adoption thereof is published within 6  
17 months of the publishing of notice of the proposed rule. If  
18 an amended or supplemental notice of either proposed or  
19 final rulemaking, or both, is published concerning the same  
20 rule, the 6-month limit must be determined with reference to  
21 the latest notice in all cases."

22 Section 2. Section 2-4-402, MCA, is amended to read:

23 "2-4-402. Powers of the committee -- duty to review  
24 rules. (1) The committee shall review all proposed rules  
25 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  
3 the Montana Administrative Procedure Act.

4 (3) The committee may:

5 (a) review the written and oral data, views, comments,  
6 and testimony considered by the agency and advise the agency  
7 whether, in the judgment of the committee, a rule is  
8 reasonably necessary to effectuate the purpose of the  
9 statute;

10 ~~(b)~~ prepare written recommendations for the  
11 adoption, amendment, or rejection of a rule and submit those  
12 recommendations to the department proposing the rule and  
13 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-



## 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."

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) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and 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.

(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.

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 (a) consistent and not in conflict with the statute;  
7 and

8 (b) reasonably necessary to effectuate the purpose of  
9 the statute. Such reasonable necessity must be demonstrated  
10 in the agency's notice of proposed rulemaking and in the  
11 written and oral data, views, comments, and OR testimony  
12 SUBMITTED BY THE PUBLIC OR THE AGENCY AND considered by the  
13 agency.

14 (7) No rule is valid unless adopted in substantial  
15 compliance with 2-4-302 or 2-4-303 and this section and  
16 unless notice of adoption thereof is published within 6  
17 months of the publishing of notice of the proposed rule. If  
18 an amended or supplemental notice of either proposed or  
19 final rulemaking, or both, is published concerning the same  
20 rule, the 6-month limit must be determined with reference to  
21 the latest notice in all cases."

22 Section 2. Section 2-4-402, MCA, is amended to read:

23 "2-4-402. Powers of the committee -- duty to review  
24 rules. (1) The committee shall review all proposed rules  
25 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  
3 the Montana Administrative Procedure Act.

4 (3) The committee may:

5 ~~(a) review the written and oral data, views, comments,~~  
6 ~~and testimony considered by the agency and advise the agency~~  
7 ~~whether, in the judgment of the committee, a rule is~~  
8 ~~reasonably necessary to effectuate the purpose of the~~  
9 ~~statute REQUEST AND OBTAIN AN AGENCY'S RULEMAKING RECORDS~~  
10 ~~FOR THE PURPOSE OF REVIEWING COMPLIANCE WITH 2-4-302;~~

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

15 (b)(c) require that a rulemaking hearing be held in  
16 accordance with the provisions of 2-4-302 through 2-4-305;

17 (c)(d) institute, intervene in, or otherwise  
18 participate in proceedings involving this chapter in the  
19 state and federal courts and administrative agencies;

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

-End-