

SENATE BILL NO. 13

INTRODUCED BY STORY

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on State Administration.
January 11, 1985	Committee recommend bill do pass. Report adopted.
January 14, 1985	Bill printed and placed on members' desks.
January 15, 1985	Second reading, do pass.
January 16, 1985	Considered correctly engrossed.
January 17, 1985	Third reading, passed. Ayes, 47; Noes, 0.
	Transmitted to House.

IN THE HOUSE

January 18, 1985	Introduced and referred to Committee on State Administration.
March 7, 1985	Committee recommend bill be concurred in. Report adopted.
March 9, 1985	Second reading, concurred in. Segregated from Committee of the Whole report.
March 11, 1985	Motion pass consideration.

March 13, 1985 Second reading, concurred in
as amended.

March 15, 1985 Third reading, concurred in.

 Returned to Senate with
amendments.

IN THE SENATE

March 15, 1985 Received from House.

March 19, 1985 Second reading, amendments not
concurred in.

March 25, 1985 On motion, Conference
Committee requested and
appointed.

April 23, 1985 Conference Committee reported.

 Conference Committee report
adopted by House.

April 24, 1985 Second reading, Conference
Committee report adopted.

 Third reading, Conference
Committee report adopted.

 Sent to enrolling.

 Reported correctly enrolled.

1 SENATE BILL NO. 13
2 INTRODUCED BY STORY
3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
6 MONTANA ADMINISTRATIVE PROCEDURE ACT DOES NOT APPLY TO UNITS
7 OF LOCAL GOVERNMENT, SCHOOL DISTRICTS, OR ANY OTHER
8 POLITICAL SUBDIVISIONS OF THE STATE; AMENDING SECTION
9 2-4-102, MCA; AND PROVIDING AN APPLICABILITY DATE."

11 WHEREAS, the Montana Supreme Court has held in recent
12 opinions that the Montana Administrative Procedure Act
13 applies to school districts; and

14 WHEREAS, it is clear from the language of section
15 2-4-102(2), MCA, as originally enacted, and from the 1971
16 official comments of the Administrative Procedures
17 Subcommittee recommending the enactment of the Montana
18 Administrative Procedure Act that the Act was never intended
19 to apply to units of local government, school districts, or
20 any other political subdivisions; and

21 WHEREAS, substantial confusion could result if the
22 provisions of the Act are continued to be applied to any
23 government entity other than state agencies; and

24 WHEREAS, it is the intent of the Legislature that the
25 Act be applied only to those agencies of state government

1 provided for in the Act and the belief of the Legislature
2 that the Act was never intended to apply to units of local
3 government, school districts, or any other political
4 subdivisions of the state.

5 THEREFORE, it is the intent of this bill to clarify
6 that the Montana Administrative Procedure Act does not apply
7 to units of local government, school districts, or any other
8 political subdivisions of this state.

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

11 Section 1. Section 2-4-102, MCA, is amended to read:
12 "2-4-102. Definitions. For purposes of this chapter,
13 the following definitions apply:

14 (1) "Administrative code committee" or "committee"
15 means the committee provided for in Title 5, chapter 14.

16 (2) (a) "Agency" means any agency, as defined in
17 2-3-102, of the state government, except that the provisions
18 of this chapter do not apply to the following:

19 (i) the state board of pardons, except that the
20 board shall be subject to the requirements of 2-4-103,
21 2-4-201, 2-4-202, and 2-4-306 and its rules shall be
22 published in the administrative rules of Montana and Montana
23 administrative register;

24 (ii) the supervision and administration of any penal
25 institution with regard to the institutional supervision,



1 custody, control, care, or treatment of youths or prisoners;
 2 ~~(c)~~(iii) the board of regents and the Montana
 3 university system;

4 ~~(d)~~(iv) the financing, construction, and maintenance of
 5 public works.

6 (b) "Agency" does not include a school district, unit
 7 of local government, or any other political subdivision of
 8 the state.

9 (3) "ARM" means the administrative rules of Montana.

10 (4) "Contested case" means any proceeding before an
 11 agency in which a determination of legal rights, duties, or
 12 privileges of a party is required by law to be made after an
 13 opportunity for hearing. The term includes but is not
 14 restricted to ratemaking, price fixing, and licensing.

15 (5) "License" includes the whole or part of any agency
 16 permit, certificate, approval, registration, charter, or
 17 other form of permission required by law but does not
 18 include a license required solely for revenue purposes.

19 (6) "Licensing" includes any agency process respecting
 20 the grant, denial, renewal, revocation, suspension,
 21 annulment, withdrawal, limitation, transfer, or amendment of
 22 a license.

23 (7) "Party" means any person named or admitted as a
 24 party or properly seeking and entitled as of right to be
 25 admitted as a party, but nothing herein shall be construed

1 to prevent an agency from admitting any person as a party
 2 for limited purposes.

3 (8) "Person" means any individual, partnership,
 4 corporation, association, governmental subdivision, agency,
 5 or public organization of any character.

6 (9) "Register" means the Montana administrative
 7 register.

8 (10) "Rule" means each agency regulation, standard, or
 9 statement of general applicability that implements,
 10 interprets, or prescribes law or policy or describes the
 11 organization, procedures, or practice requirements of an
 12 agency. The term includes the amendment or repeal of a prior
 13 rule but does not include:

14 (a) statements concerning only the internal management
 15 of an agency and not affecting private rights or procedures
 16 available to the public;

17 (b) formal opinions of the attorney general and
 18 declaratory rulings issued pursuant to 2-4-501;

19 (c) rules relating to the use of public works,
 20 facilities, streets, and highways when the substance of such
 21 rules is indicated to the public by means of signs or
 22 signals;

23 (d) seasonal rules adopted annually relating to
 24 hunting, fishing, and trapping when there is a statutory
 25 requirement for the publication of such rules and rules

1 adopted annually relating to the seasonal recreational use
2 of lands and waters owned or controlled by the state when
3 the substance of such rules is indicated to the public by
4 means of signs or signals;

5 (e) rules implementing the state personnel
6 classification plan, the state wage and salary plan, or the
7 statewide budgeting and accounting system;

8 (f) uniform rules adopted pursuant to interstate
9 compact, except that such rules shall be filed in accordance
10 with 2-4-306 and shall be published in the administrative
11 rules of Montana.

12 (11) "Substantive rules" are either:

13 (a) legislative rules, which if adopted in accordance
14 with this chapter and under expressly delegated authority to
15 promulgate rules to implement a statute have the force of
16 law and when not so adopted are invalid; or

17 (b) adjective or interpretive rules, which may be
18 adopted in accordance with this chapter and under express or
19 implied authority to codify an interpretation of a statute.
20 Such interpretation lacks the force of law."

21 NEW SECTION. Section 2. Retroactive application.
22 Section 1 shall apply as of December 31, 1972, except that
23 proceedings pending on that date are not affected.

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

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 17 Subcommittee recommending the enactment of the Montana
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 19 to apply to units of local government, school districts, or
 20 any other political subdivisions; and

21 WHEREAS, substantial confusion could result if the
 22 provisions of the Act are continued to be applied to any
 23 government entity other than state agencies; and

24 WHEREAS, it is the intent of the Legislature that the
 25 Act be applied only to those agencies of state government

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 17 2-3-102, of the state government, except that the provisions
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19 (a)(i) the state board of pardons, except that the
 20 board shall be subject to the requirements of 2-4-103,
 21 2-4-201, 2-4-202, and 2-4-306 and its rules shall be
 22 published in the administrative rules of Montana and Montana
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24 (b)(ii) the supervision and administration of any penal
 25 institution with regard to the institutional supervision,



1 custody, control, care, or treatment of youths or prisoners;
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6 classification plan, the state wage and salary plan, or the
7 statewide budgeting and accounting system;

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10 with 2-4-306 and shall be published in the administrative
11 rules of Montana.

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14 with this chapter and under expressly delegated authority to
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 8 POLITICAL SUBDIVISIONS OF THE STATE; AMENDING SECTION
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 17 Subcommittee recommending the enactment of the Montana
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7 statewide budgeting and accounting system;

8 (f) uniform rules adopted pursuant to interstate
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10 with 2-4-306 and shall be published in the administrative
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21 NEW SECTION. Section 2. Retroactive application.
22 Section 1 shall apply as of December 31, 1972, except that
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-End-

HOUSE

COMMITTEE OF THE WHOLE AMENDMENT

31301433.p.cw

3-13-85
DATE

2:33
TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 13

3rd reading copy (blue) as follows:
Color

1. Title, line 8.
Following: "STATE;"
Insert: "PROVIDING THAT THE CONTESTED CASE PROCEDURE OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT APPLIES TO LOCAL GOVERNMENT UNITS OTHER THAN SCHOOL DISTRICTS;"
2. Page 3, line 6.
Following: "(b)"
Strike: "Agency"
Insert: "Except as provided in subsection (4),
"agency""
3. Page 3, line 11.
Following: "agency"
Insert: ", including any board, bureau, commission, department, authority, or officer of a local government other than a school district,"

MF

ADOPT

REJECT

Rasmussen

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6 MONTANA ADMINISTRATIVE PROCEDURE ACT DOES NOT APPLY TO UNITS
7 OF LOCAL GOVERNMENT, SCHOOL DISTRICTS, OR ANY OTHER
8 POLITICAL SUBDIVISIONS OF THE STATE; PROVIDING THAT THE
9 CONTESTED CASE PROCEDURE OF THE MONTANA ADMINISTRATIVE
10 PROCEDURE ACT APPLIES TO LOCAL GOVERNMENT UNITS OTHER THAN
11 SCHOOL DISTRICTS; AMENDING SECTION 2-4-102, MCA; AND
12 PROVIDING AN APPLICABILITY DATE."

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14 WHEREAS, the Montana Supreme Court has held in recent
15 opinions that the Montana Administrative Procedure Act
16 applies to school districts; and

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REFERENCE BILL

SB 13

1 administrative register;

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3 institution with regard to the institutional supervision,
4 custody, control, care, or treatment of youths or prisoners;

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6 university system;

7 ~~(d)~~(iv) the financing, construction, and maintenance of
8 public works.

9 (b) "Agency" EXCEPT AS PROVIDED IN SUBSECTION (4),
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11 government, or any other political subdivision of the state.

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-End-

CONFERENCE COMMITTEE REPORT

Report No. 1

APR 22, 1985

MR. PRESIDENT

We, your _____ Conference Committee on

SENATE BILL NO.13, reference copy,

met and considered House Amendments to SENATE BILL NO.13, on APR 22.

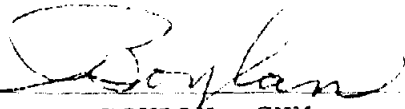
We recommend as follows:

1. Title, lines 8 through 11.
Following: "STATE;" on line 8
Strike: remainder of line 8 through "DISTRICTS;" on line 11
2. Page 3, lines 9 and 10.
Following: "Agency" on line 9
Strike: remainder of line 9 through "AGENCY" on line 10
Insert: "Agency"
3. Page 3, lines 14 through 16.
Following: "agency"
Strike: remainder of line 14 through "DISTRICT," on line 16

CCSB13

And that this Conference Committee report be adopted.

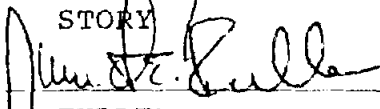
FOR THE SENATE



BOYLAN, CHM

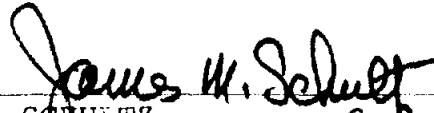


STORY



FULLER

FOR THE HOUSE



SCHULTZ



DARKO



KADAS

ADOPT REJECT

RAMIREZ

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8 POLITICAL SUBDIVISIONS OF THE STATE; ~~PROVIDING--THAT--THE~~
9 ~~CONTESTED--CASE--PROCEDURE--OF--THE--MONTANA--ADMINISTRATIVE~~
10 ~~PROCEDURE--ACT--APPLIES--TO--LOCAL--GOVERNMENT--UNITS--OTHER--THAN~~
11 ~~SCHOOL--DISTRICTS;~~ AMENDING SECTION 2-4-102, MCA; AND
12 PROVIDING AN APPLICABILITY DATE."

13
14 WHEREAS, the Montana Supreme Court has held in recent
15 opinions that the Montana Administrative Procedure Act
16 applies to school districts; and

17 WHEREAS, it is clear from the language of section
18 2-4-102(2), MCA, as originally enacted, and from the 1971
19 official comments of the Administrative Procedures
20 Subcommittee recommending the enactment of the Montana
21 Administrative Procedure Act that the Act was never intended
22 to apply to units of local government, school districts, or
23 any other political subdivisions; and

24 WHEREAS, substantial confusion could result if the
25 provisions of the Act are continued to be applied to any

1 government entity other than state agencies; and

2 WHEREAS, it is the intent of the Legislature that the
3 Act be applied only to those agencies of state government
4 provided for in the Act and the belief of the Legislature
5 that the Act was never intended to apply to units of local
6 government, school districts, or any other political
7 subdivisions of the state.

8 THEREFORE, it is the intent of this bill to clarify
9 that the Montana Administrative Procedure Act does not apply
10 to units of local government, school districts, or any other
11 political subdivisions of this state.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 2-4-102, MCA, is amended to read:
15 "2-4-102. Definitions. For purposes of this chapter,
16 the following definitions apply:

17 (1) "Administrative code committee" or "committee"
18 means the committee provided for in Title 5, chapter 14.

19 (2) (a) "Agency" means any agency, as defined in
20 2-3-102, of the state government, except that the provisions
21 of this chapter do not apply to the following:

22 (a)(i) the state board of pardons, except that the
23 board shall be subject to the requirements of 2-4-103,
24 2-4-201, 2-4-202, and 2-4-306 and its rules shall be
25 published in the administrative rules of Montana and Montana

1 administrative register;

2 (b)(ii) the supervision and administration of any penal
3 institution with regard to the institutional supervision,
4 custody, control, care, or treatment of youths or prisoners;

5 (c)(iii) the board of regents and the Montana
6 university system;

7 (d)(iv) the financing, construction, and maintenance of
8 public works.

9 (b) "Agency" "AGENCY" ~~EXCEPT AS PROVIDED IN SUBSECTION~~
10 ~~(4) "AGENCY" does not include a school district, unit of~~
11 ~~local government, or any other political subdivision of the~~
12 ~~state.~~

13 (3) "ARM" means the administrative rules of Montana.

14 (4) "Contested case" means any proceeding before an
15 ~~agency, INCLUDING ANY BOARD, BUREAU, COMMISSION, DEPARTMENT,~~
16 ~~AUTHORITY, OR OFFICER OF A LOCAL GOVERNMENT OTHER THAN A~~
17 ~~SCHOOL DISTRICT~~ in which a determination of legal rights,
18 duties, or privileges of a party is required by law to be
19 made after an opportunity for hearing. The term includes but
20 is not restricted to ratemaking price fixing, and
21 licensing.

22 (5) "License" includes the whole or part of any agency
23 permit, certificate, approval, registration, charter, or
24 other form of permission required by law but does not
25 include a license required solely for revenue purposes.

1 (6) "Licensing" includes any agency process respecting
2 the grant, denial, renewal, revocation, suspension,
3 annulment, withdrawal, limitation, transfer, or amendment of
4 a license.

5 (7) "Party" means any person named or admitted as a
6 party or properly seeking and entitled as of right to be
7 admitted as a party, but nothing herein shall be construed
8 to prevent an agency from admitting any person as a party
9 for limited purposes.

10 (8) "Person" means any individual, partnership,
11 corporation, association, governmental subdivision, agency,
12 or public organization of any character.

13 (9) "Register" means the Montana administrative
14 register.

15 (10) "Rule" means each agency regulation, standard, or
16 statement of general applicability that implements,
17 interprets, or prescribes law or policy or describes the
18 organization, procedures, or practice requirements of an
19 agency. The term includes the amendment or repeal of a prior
20 rule but does not include:

21 (a) statements concerning only the internal management
22 of an agency and not affecting private rights or procedures
23 available to the public;

24 (b) formal opinions of the attorney general and
25 declaratory rulings issued pursuant to 2-4-501;

1 (c) rules relating to the use of public works,
2 facilities, streets, and highways when the substance of such
3 rules is indicated to the public by means of signs or
4 signals;

5 (d) seasonal rules adopted annually relating to
6 hunting, fishing, and trapping when there is a statutory
7 requirement for the publication of such rules and rules
8 adopted annually relating to the seasonal recreational use
9 of lands and waters owned or controlled by the state when
10 the substance of such rules is indicated to the public by
11 means of signs or signals;

12 (e) rules implementing the state personnel
13 classification plan, the state wage and salary plan, or the
14 statewide budgeting and accounting system;

15 (f) uniform rules adopted pursuant to interstate
16 compact, except that such rules shall be filed in accordance
17 with 2-4-306 and shall be published in the administrative
18 rules of Montana.

19 (11) "Substantive rules" are either:

20 (a) legislative rules, which if adopted in accordance
21 with this chapter and under expressly delegated authority to
22 promulgate rules to implement a statute have the force of
23 law and when not so adopted are invalid; or

24 (b) adjective or interpretive rules, which may be
25 adopted in accordance with this chapter and under express or

1 implied authority to codify an interpretation of a statute.
2 Such interpretation lacks the force of law."

3 NEW SECTION. Section 2. Retroactive application.
4 Section 1 shall apply as of December 31, 1972, except that
5 proceedings pending on that date are not affected.

-End-