

SENATE BILL 397

Introduced by Meyer, et al.

2/11	Introduced
2/11	Referred to State Administration
2/13	Fiscal Note Requested
2/15	Hearing
2/17	Committee Report--Bill Passed as Amended
2/18	Fiscal Note Received
2/20	2nd Reading Passed
2/20	Fiscal Note Printed
2/21	3rd Reading Passed

Transmitted to House

3/04	Referred to Judiciary
3/22	Hearing
3/23	Tabled in Committee

1 *Senate* BILL NO. *397*
 2 INTRODUCED BY *Meyer Coley Phillips* *CRINDE*
 3 *Ca-Phill Hoffman* BY REQUEST OF THE GOVERNOR *Thorp* *H.A.P. McGee*
 4 *Stanton* *MERCER* *Denberg* *Paterson* *Hammer* *Robt* *St*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO REVIEW OF
 6 PROPOSED ADMINISTRATIVE RULES; REQUIRING REVIEW BY THE
 7 OFFICE OF THE GOVERNOR; AUTHORIZING THE GOVERNOR TO ORDER AN
 8 AGENCY PROPOSING RULE CHANGES TO CHANGE THE PROPOSAL;
 9 REQUIRING A DEPARTMENT RULE REVIEWER TO CERTIFY ON RULE
 10 NOTICES THAT HE HAS REVIEWED THE PROPOSAL TO THE BEST OF HIS
 11 ABILITY; AMENDING SECTION 2-4-110, MCA; AND PROVIDING AN
 12 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

15 NEW SECTION. Section 1. Review of administrative rule
 16 proposals by governor's office. (1) Each executive branch
 17 department, commission, board, division, bureau, or other
 18 agency, as defined in 2-15-102, including those attached to
 19 a department or other agency for administrative or other
 20 purposes, shall submit its intended administrative rule
 21 changes to the governor before publishing a rule notice of
 22 intended action or notice of adoption in the Montana
 23 Administrative Register. This section does not apply to the
 24 attorney general, state auditor, secretary of state, or
 25 superintendent of public instruction.

1 (2) The governor shall review the intended rule changes
 2 prior to the time the agency files a rule notice of intended
 3 action in the Montana Administrative Register and may
 4 delegate to a person or agency in his office or in another
 5 part of the executive branch the duty to review and make
 6 recommendations to him. He may in writing order the agency
 7 desiring the rule changes to modify, delete, or add to the
 8 intended changes and to amend or repeal rules or adopt new
 9 rules, as specified by the governor. The agency shall then
 10 file a rule notice of intended action with the secretary of
 11 state, as ordered by the governor. The governor shall inform
 12 the agency of the results of his review within 60 days after
 13 the intended changes are submitted to him. If a notice of
 14 adoption that will be published in the Montana
 15 Administrative Register contains any changes from the rule
 16 notice of intended action, the notice of adoption must be
 17 submitted to the governor for review under this section and
 18 he may order any changes that he is authorized to order in
 19 regard to desired rule changes submitted to him prior to the
 20 filing of a rule notice of intended action. He shall inform
 21 the agency of the results of his review within 30 days.

22 (3) In reviewing rules under this section, the
 23 governor's office shall:

24 (a) consider the fiscal and other economic impacts on
 25 the public and private sectors of the state;

1 (b) seek to coordinate the rules of the various
2 agencies and to ensure that they do not conflict with each
3 other or send conflicting signals to or impose conflicting
4 requirements on those subject to the rules;

5 (c) review the adequacy of the agency's rationale for
6 the intended rule changes and whether the rule is reasonably
7 necessary to effectuate the purpose of the code section or
8 sections implemented;

9 (d) ensure that the review of the rules under 2-4-110
10 has complied with that section; and

11 (e) ensure that English language usage and grammar are
12 correct and that any rule notice of intended action or
13 notice of adoption is written in an understandable form.

14 **Section 2.** Section 2-4-110, MCA, is amended to read:

15 "2-4-110. Departmental review of rule notices. (1) The
16 head of each department of the executive branch shall
17 appoint an existing attorney, paralegal, or other qualified
18 person from that department to review each departmental rule
19 proposal notice of intended action, adoption notice of
20 adoption, or other notice relating to administrative
21 rulemaking.

22 (2) The person appointed under subsection (1) shall
23 review each notice by any division, bureau, or other unit of
24 the department, including units attached to the department
25 for administrative purposes only under 2-15-121, for

1 compliance with this chapter before the notice is filed with
2 the secretary of state. The reviewer shall pay particular
3 attention to 2-4-302 and 2-4-305. The review must include
4 but is not limited to consideration of:

5 (a) the adequacy of the rationale for the intended
6 action and whether the intended action is reasonably
7 necessary to effectuate the purpose of the code section or
8 sections implemented;

9 (b) whether the proper statutory authority for the rule
10 is cited;

11 (c) whether the citation of the code section or
12 sections implemented is correct; and

13 (d) whether the intended action is contrary to the code
14 section or sections implemented or to other law.

15 (3) The person appointed under subsection (1) shall
16 sign each rule notice of intended action, notice of
17 adoption, or other notice relating to administrative
18 rulemaking before the notice is submitted to the governor
19 for review and shall also sign the copy of any notice filed
20 with the secretary of state for publication in the Montana
21 Administrative Register. The signature constitutes his
22 certification that he has, to the best of his ability,
23 performed the review required by this section."

24 **NEW SECTION. Section 3.** Effective date --
25 applicability. (1) [This act] is effective on passage and

LC 1192/01

1 approval.

2 (2) [This act] applies to rule proposals for which a
3 rule notice of intended action has not been filed with the
4 secretary of state on [the effective date of this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB397, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act relating to review of proposed administrative rules; requiring review by the office of the Governor; authorizing the Governor to order an agency proposing rule changes to change the proposal; requiring a department rule reviewer to certify on rule notices that he has reviewed the proposal to the best of his ability; amending Section 2-4-110, MCA; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. Level of proposed rules to remain constant.
2. Governor to use all 60 days for review of proposed rules.
3. Secretary of State to publish MAR and ARM on schedule.
4. Reduction of pages in ARM and MAR save the Secretary of State's office \$8 per page.
5. Addition of pages to ARM and MAR cost the Secretary of State's Office \$16 per page.
6. Average length of MAR is 110 pages.
7. Number of pages effected per issue is 100 pages.
8. No change in fees charged to agencies for publication of rules.

FISCAL IMPACT:

		FY90			FY91	
Secretary of State	Current	Proposed		Current	Proposed	
Expenditures:	Law	Law	Difference	Law	Law	Difference
Personal Services	\$ -0-	\$1,282	\$1,282	\$ -0-	\$ -0-	\$ -0-
Operating Expenses	-0-	6,400	6,400	-0-	-0-	-0-
Total	\$ -0-	\$7,682	\$7,682	\$ -0-	\$ -0-	\$ -0-

Funding: State Special-Administrative Rules

Governor's Office

No fiscal impact. Any duties under this proposed legislation will be done with existing staff.

Ray Shackelford

DATE 2/18/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

Meyer

DATE 2/18/89

DARRYL MEYER, PRIMARY SPONSOR

Fiscal Note for SB397, as introduced

SB 397

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

SENATE BILL NO. 397

INTRODUCED BY MEYER, CODY, PHILLIPS, CLARK, GRINDE,
CAMPBELL, HOFFMAN, THOFT, HARP, MOORE, DEBRUYCKER,
KASTEN, MERCER, REHBERG, PATTERSON, RAMIREZ,
COBB, ZOOK, ROTH, GIACOMETTO, PAVLOVICH, O'CONNELL,
BECK, HAMMOND, FARRELL, NOBLE, MCLANE, THAYER,

GAGE, STORY, GALT, JENKINS

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NOTICES THAT HE HAS REVIEWED THE PROPOSAL TO THE BEST OF HIS
ABILITY; AMENDING SECTION 2-4-110, MCA; AND PROVIDING AN
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Review of administrative rule
proposals by governor's office. (1) Each executive branch
department, commission, board, division, bureau, or other
agency, as defined in 2-15-102, including those attached to
a department or other agency for administrative or other
purposes, shall submit its intended administrative rule

changes to the governor before publishing a rule notice of
intended action or notice of adoption in the Montana
Administrative Register. This section does not apply to the
attorney general, state auditor, secretary of state,
DEPARTMENT OF PUBLIC SERVICE REGULATION or superintendent of
public instruction.

(2) The governor shall review the intended rule
changes prior to the time the agency files a rule notice of
intended action in the Montana Administrative Register and
may delegate to a person or agency in his office or in
another part of the executive branch the duty to review and
make recommendations to him. He may in writing order the
agency desiring the rule changes to modify, delete, or add
to the intended changes and to amend or repeal rules or
adopt new rules, as specified by the governor. The agency
shall then file a rule notice of intended action with the
secretary of state, as ordered by the governor. The governor
shall inform the agency of the results of his review within
60 days after the intended changes are submitted to him. If
a notice of adoption that will be published in the Montana
Administrative Register contains any changes from the rule
notice of intended action, the notice of adoption must be
submitted to the governor for review under this section and
he may order any changes that he is authorized to order in
regard to desired rule changes submitted to him prior to the

1 filing of a rule notice of intended action. He shall inform
2 the agency of the results of his review within 30 days.

3 (3) In reviewing rules under this section, the
4 governor's office shall:

5 (a) consider the fiscal and other economic impacts on
6 the public and private sectors of the state;

7 (b) seek to coordinate the rules of the various
8 agencies and to ensure that they do not conflict with each
9 other or send conflicting signals to or impose conflicting
10 requirements on those subject to the rules;

11 (c) review the adequacy of the agency's rationale for
12 the intended rule changes and whether the rule is reasonably
13 necessary to effectuate the purpose of the code section or
14 sections implemented;

15 (d) ensure that the review of the rules under 2-4-110
16 has complied with that section; and

17 (e) ensure that English language usage and grammar are
18 correct and that any rule notice of intended action or
19 notice of adoption is written in an understandable form.

20 **Section 2.** Section 2-4-110, MCA, is amended to read:

21 "2-4-110. Departmental review of rule notices. (1) The
22 head of each department of the executive branch shall
23 appoint an existing attorney, paralegal, or other qualified
24 person from that department to review each departmental rule
25 proposal notice of intended action, adoption notice of

1 adoption, or other notice relating to administrative
2 rulemaking.

3 (2) The person appointed under subsection (1) shall
4 review each notice by any division, bureau, or other unit of
5 the department, including units attached to the department
6 for administrative purposes only under 2-15-121, for
7 compliance with this chapter before the notice is filed with
8 the secretary of state. The reviewer shall pay particular
9 attention to 2-4-302 and 2-4-305. The review must include
10 but is not limited to consideration of:

11 (a) the adequacy of the rationale for the intended
12 action and whether the intended action is reasonably
13 necessary to effectuate the purpose of the code section or
14 sections implemented;

15 (b) whether the proper statutory authority for the
16 rule is cited;

17 (c) whether the citation of the code section or
18 sections implemented is correct; and

19 (d) whether the intended action is contrary to the
20 code section or sections implemented or to other law.

21 (3) The EXCEPT FOR THE ATTORNEY GENERAL, STATE
22 AUDITOR, SECRETARY OF STATE, DEPARTMENT OF PUBLIC SERVICE
23 REGULATION, OR SUPERINTENDENT OF PUBLIC INSTRUCTION, THE
24 person appointed under subsection (1) shall sign each rule
25 notice of intended action, notice of adoption, or other

1 notice relating to administrative rulemaking before the
2 notice is submitted to the governor for review and shall
3 also sign the copy of any notice filed with the secretary of
4 state for publication in the Montana Administrative
5 Register. The signature constitutes his certification that
6 he has, to the best of his ability, performed the review
7 required by this section."

8 NEW SECTION. Section 3. Effective date --
9 applicability. (1) [This act] is effective on passage and
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11 (2) [This act] applies to rule proposals for which a
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