

Sprague
 Sliter
 MOORE
 ANNER
 Molnar
 BEAUCOURT
 Beaudry
 Ponce
 Brainard
 Buer
 RINDSE
 M. Taylor
 Senate BILL NO. 271
 Bohatsky NW
 OHS
 INTRODUCED BY [Signature]
 [Signature] Walters
 [Signature] [Signature]
 Storage ORR for [Signature]
 [Signature] [Signature] [Signature]
 [Signature] [Signature] [Signature] [Signature]
 [Signature] [Signature] [Signature] [Signature]
 [Signature] [Signature] [Signature] [Signature] [Signature]

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30

A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE."

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 in the statement the 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~~ register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not 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 must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.
 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that

1 the rule purports to implement.

2 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
3 governing board or commission must include a citation to and description of the policy implemented. Each
4 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
5 comply with the requisites for validity of rules established by this chapter.

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

8 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
9 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
10 adopted is not valid or effective unless it is:

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

12 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
13 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
14 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
15 considered by the agency.

16 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and
17 this section and unless notice of adoption of the rule is published within 6 months of the publishing of
18 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,
19 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the
20 latest notice in all cases.

21 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
22 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections
23 implemented by rules.

24 (9) If a majority of the members of the administrative code committee notify the committee
25 presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify
26 the agency in writing that the committee objects to the proposal notice and will address the objections at
27 the next committee meeting. Following notice by the committee to the agency, the proposal notice may
28 not be adopted until publication of the last issue of the register that is published before expiration of the
29 6-month period during which the adoption notice must be published, unless prior to that time, the
30 committee meets and does not make the same objection. A copy of the committee's notification to the

1 agency must be included in the committee's records."

2

3 **Section 2.** Section 2-4-306, MCA, is amended to read:

4 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
5 shall file with the secretary of state a copy of each rule adopted by it.

6 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
7 ~~which that~~ are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
8 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
9 permanent register of all notices and rules filed, including superseded and repealed rules, ~~which shall that~~
10 must be open to public inspection and shall provide copies of any notice or rule upon request of any person.
11 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
12 providing ~~such~~ copies.

13 (3) In the event that the administrative code committee has conducted a poll of the legislature in
14 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
15 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

16 (4) Each rule ~~shall become~~ is effective after publication in the register, as provided in 2-4-312,
17 except that:

18 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
19 date;

20 (b) subject to applicable constitutional or statutory provisions:

21 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
22 date following publication in the register; and

23 (ii) an emergency rule ~~shall become~~ is effective immediately upon filing with the secretary of state
24 or at a stated date following publication in the register if the agency finds that this effective date is
25 necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a
26 brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall take
27 appropriate measures to make emergency rules known to ~~every~~ each person who may be affected by them.

28 (c) if, following written administrative code committee notification to an agency under 2-4-305(9),
29 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule
30 is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment

1 of the regular session of the legislature that begins after the notice proposing the rule was published by the
2 secretary of state, unless, following the committee's objection under 2-4-406(1):

3 (i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

4 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
5 of the committee members, as communicated in writing to the committee presiding officer and staff, make
6 it comply with the committee's objection and concerns."

7

8 **NEW SECTION. Section 3. Applicability.** [This act] applies to rules objected to under [this act] after
9 [the effective date of this act].

10

-END-

ANNER
 BENEDICT
 Brainard
 PRINCE
 Sliter
 Molnar
 Beauclerk
 Bruce
 Ruer
 M. Taylor
 Mord
 Senate BILL NO. 271
 J.M.E. Bohanek
 KENNEDY
 nicks
 INTRODUCED BY
 Barthelemy
 Walters
 Ed
 Case
 Orr
 DeBruycker
 Beck
 Wagner
 Barrett
 Payne
 A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO
 BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE
 ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED
 UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION
 PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE
 COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL
 AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS
 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE."
 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 in the
 statement the 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~~ register, the differences
 must be described in the statement of reasons for and against agency action. When written or oral
 submissions have not 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 must
 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the
 language.
 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking
 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and
 adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that

1 the rule purports to implement.

2 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
3 governing board or commission must include a citation to and description of the policy implemented. Each
4 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
5 comply with the requisites for validity of rules established by this chapter.

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

8 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
9 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
10 adopted is not valid or effective unless it is:

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

12 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
13 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
14 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
15 considered by the agency.

16 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and
17 this section and unless notice of adoption of the rule is published within 6 months of the publishing of
18 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,
19 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the
20 latest notice in all cases.

21 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
22 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections
23 implemented by rules.

24 (9) If a majority of the members of the administrative code committee notify the committee
25 presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify
26 the agency in writing that the committee objects to the proposal notice and will address the objections at
27 the next committee meeting. Following notice by the committee to the agency, the proposal notice may
28 not be adopted until publication of the last issue of the register that is published before expiration of the
29 6-month period during which the adoption notice must be published, unless prior to that time, the
30 committee meets and does not make the same objection. A copy of the committee's notification to the

1 agency must be included in the committee's records."

2

3 **Section 2.** Section 2-4-306, MCA, is amended to read:

4 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
5 shall file with the secretary of state a copy of each rule adopted by it.

6 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
7 ~~which that~~ are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
8 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
9 permanent register of all notices and rules filed, including superseded and repealed rules, ~~which shall that~~
10 must be open to public inspection and shall provide copies of any notice or rule upon request of any person.
11 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
12 providing ~~such~~ copies.

13 (3) In the event that the administrative code committee has conducted a poll of the legislature in
14 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
15 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

16 (4) Each rule ~~shall become~~ is effective after publication in the register, as provided in 2-4-312,
17 except that:

18 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
19 date;

20 (b) subject to applicable constitutional or statutory provisions:

21 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
22 date following publication in the register; and

23 (ii) an emergency rule ~~shall become~~ is effective immediately upon filing with the secretary of state
24 or at a stated date following publication in the register if the agency finds that this effective date is
25 necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a
26 brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall take
27 appropriate measures to make emergency rules known to ~~every~~ each person who may be affected by them.

28 (c) if, following written administrative code committee notification to an agency under 2-4-305(9),
29 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule
30 is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment

1 of the regular session of the legislature that begins after the notice proposing the rule was published by the
2 secretary of state, unless, following the committee's objection under 2-4-406(1):

3 (i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

4 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
5 of the committee members, as communicated in writing to the committee presiding officer and staff, make
6 it comply with the committee's objection and concerns."

7
8 **NEW SECTION. Section 3. Applicability.** [This act] applies to rules objected to under [this act] after
9 [the effective date of this act].

10 -END-

Feland

AHNER

BENEDICT

Brainard

BRINDE

Spiegel

Sliter

Molnar

Beaudry

Proce

Ruer

M. Taylor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY

Senate BILL NO. 271

ORR

A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO

BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE

ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED

UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION

PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE

COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL

AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS

2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE."

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 in the

statement the 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~~ register, the differences

must be described in the statement of reasons for and against agency action. When written or oral

submissions have not 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 must

clearly indicate the portion of the language that is statutory and the portion that is an amplification of the

language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking

authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and

adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that

1 the rule purports to implement.

2 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
3 governing board or commission must include a citation to and description of the policy implemented. Each
4 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
5 comply with the requisites for validity of rules established by this chapter.

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

8 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
9 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
10 adopted is not valid or effective unless it is:

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

12 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
13 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
14 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
15 considered by the agency.

16 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and
17 this section and unless notice of adoption of the rule is published within 6 months of the publishing of
18 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,
19 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the
20 latest notice in all cases.

21 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
22 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections
23 implemented by rules.

24 (9) If a majority of the members of the administrative code committee notify the committee
25 presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify
26 the agency in writing that the committee objects to the proposal notice and will address the objections at
27 the next committee meeting. Following notice by the committee to the agency, the proposal notice may
28 not be adopted until publication of the last issue of the register that is published before expiration of the
29 6-month period during which the adoption notice must be published, unless prior to that time, the
30 committee meets and does not make the same objection. A copy of the committee's notification to the

1 agency must be included in the committee's records."

2
3 **Section 2.** Section 2-4-306, MCA, is amended to read:

4 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
5 shall file with the secretary of state a copy of each rule adopted by it.

6 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
7 ~~which that~~ are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
8 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
9 permanent register of all notices and rules filed, including superseded and repealed rules, ~~which shall that~~
10 must be open to public inspection and shall provide copies of any notice or rule upon request of any person.
11 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
12 providing ~~such~~ copies.

13 (3) In the event that the administrative code committee has conducted a poll of the legislature in
14 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
15 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

16 (4) Each rule ~~shall become~~ is effective after publication in the register, as provided in 2-4-312,
17 except that:

18 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
19 date;

20 (b) subject to applicable constitutional or statutory provisions:

21 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
22 date following publication in the register; and

23 (ii) an emergency rule ~~shall become~~ is effective immediately upon filing with the secretary of state
24 or at a stated date following publication in the register if the agency finds that this effective date is
25 necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a
26 brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall take
27 appropriate measures to make emergency rules known to ~~every~~ each person who may be affected by them.

28 (c) if, following written administrative code committee notification to an agency under 2-4-305(9),
29 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule
30 is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment

1 of the regular session of the legislature that begins after the notice proposing the rule was published by the
2 secretary of state, unless, following the committee's objection under 2-4-406(1):

3 (i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

4 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
5 of the committee members, as communicated in writing to the committee presiding officer and staff, make
6 it comply with the committee's objection and concerns."

7
8 **NEW SECTION. Section 3. Applicability.** [This act] applies to rules objected to under [this act] after
9 [the effective date of this act].

10 -END-

Feland

AHNER

BENEDICT

Brainard

RINDEE

Sprague

Sliter

Molnar

Beaudry

Lowell

Ryer

M. Taylor

1 Klenon

Moss

Senate

BILL NO. 271

Bohatsky

Wells

2 Miller

INTRODUCED BY

Storall

Barber

Walters

Edwards

Rose

3

Storall

ORR

DeBry

McBeck

Wagner

Carroll

4

A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO

5

BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE

6

ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED

7

UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION

8

PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE

9

COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL

10

AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS

11

2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE."

12

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

13

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

14

"2-4-305. Requisites for validity -- authority and statement of reasons. (1) The agency shall

15

consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency

16

shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the

17

statement the reasons for overruling the considerations urged against its adoption. If substantial differences

18

exist between the rule as proposed and as adopted and the differences have not been described or set forth

19

in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences

20

must be described in the statement of reasons for and against agency action. When written or oral

21

submissions have not been received, an agency may omit the statement of reasons.

22

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

23

statutory language in order to convey the meaning of a rule interpreting the language, the reference must

24

clearly indicate the portion of the language that is statutory and the portion that is an amplification of the

25

language.

26

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking

27

authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and

28

adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that

29

30

1 the rule purports to implement.

2 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
3 governing board or commission must include a citation to and description of the policy implemented. Each
4 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
5 comply with the requisites for validity of rules established by this chapter.

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

8 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
9 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
10 adopted is not valid or effective unless it is:

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

12 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
13 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
14 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
15 considered by the agency.

16 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and
17 this section and unless notice of adoption of the rule is published within 6 months of the publishing of
18 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,
19 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the
20 latest notice in all cases.

21 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
22 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections
23 implemented by rules.

24 (9) If a majority of the members of the administrative code committee notify the committee
25 presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify
26 the agency in writing that the committee objects to the proposal notice and will address the objections at
27 the next committee meeting. Following notice by the committee to the agency, the proposal notice may
28 not be adopted until publication of the last issue of the register that is published before expiration of the
29 6-month period during which the adoption notice must be published, unless prior to that time, the
30 committee meets and does not make the same objection. A copy of the committee's notification to the

1 agency must be included in the committee's records."

2
3 **Section 2.** Section 2-4-306, MCA, is amended to read:

4 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
5 shall file with the secretary of state a copy of each rule adopted by it.

6 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
7 ~~which that~~ are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
8 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
9 permanent register of all notices and rules filed, including superseded and repealed rules, ~~which shall that~~
10 must be open to public inspection and shall provide copies of any notice or rule upon request of any person.
11 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
12 providing ~~such~~ copies.

13 (3) In the event that the administrative code committee has conducted a poll of the legislature in
14 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
15 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

16 (4) Each rule ~~shall become~~ is effective after publication in the register, as provided in 2-4-312,
17 except that:

18 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
19 date;

20 (b) subject to applicable constitutional or statutory provisions:

21 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
22 date following publication in the register; and

23 (ii) an emergency rule ~~shall become~~ is effective immediately upon filing with the secretary of state
24 or at a stated date following publication in the register if the agency finds that this effective date is
25 necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a
26 brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall take
27 appropriate measures to make emergency rules known to ~~every~~ each person who may be affected by them.

28 (c) if, following written administrative code committee notification to an agency under 2-4-305(9),
29 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule
30 is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment

1 of the regular session of the legislature that begins after the notice proposing the rule was published by the
2 secretary of state, unless, following the committee's objection under 2-4-406(1):

3 (i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

4 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
5 of the committee members, as communicated in writing to the committee presiding officer and staff, make
6 it comply with the committee's objection and concerns."

7
8 **NEW SECTION. Section 3. Applicability.** [This act] applies to rules objected to under [this act] after
9 [the effective date of this act].

10 -END-

SENATE BILL NO. 271

1
 2 INTRODUCED BY JENKINS, BANKHEAD, WALTERS, MARSHALL, LAWSON, ROSE, OHS, MILLS,
 3 M. TAYLOR, GRINDE, BRAINARD, BAER, DENNY, BOHARSKI, BEAUDRY, PROUSE, BENEDICT,
 4 FELAND, MOLNAR, AHNER, SPRAGUE, KEENAN, SLITER, MOOD, MILLER, STOVALL, ORR, JORE,
 5 CRIPPEN, DEBRUYCKER, SIMON, PECK, WAGNER, HAGENER, BARNETT, HAYNE,
 6 BOOKOUT-REINICKE, KITZENBERG, EMERSON, WELLS, DEVLIN, BECK, COLE, JABS, STANG,
 7 HARGROVE, TOEWS, ARNOTT, GLASER, ANDERSON, GROSFIELD, SHEA, CRISMORE, HERTEL,
 8 AKLESTAD, ESTRADA, MCGEE, SWYSGOOD, LYNCH, HARP, KEATING, MESAROS, DEPRATU,
 9 KASTEN, MCNUTT, MERCER, CLARK, RANEY, FOSTER, GAGE, BISHOP, MAHLUM, HIBBARD, COBB,
 10 BITNEY, THOMAS, REHBEIN

11
 12 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO
 13 BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE
 14 ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED,
 15 UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION;
 16 PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE
 17 COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL
 18 AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS
 19 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
 23 **Section 1.** Section 2-4-305, MCA, is amended to read:

24 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall
 25 consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency
 26 shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the
 27 statement the reasons for overruling the considerations urged against its adoption. If substantial differences
 28 exist between the rule as proposed and as adopted and the differences have not been described or set forth
 29 in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences
 30 must be described in the statement of reasons for and against agency action. When written or oral

1 submissions have not been received, an agency may omit the statement of reasons.

2 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to
3 statutory language in order to convey the meaning of a rule interpreting the language, the reference must
4 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the
5 language.

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

10 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
11 governing board or commission must include a citation to and description of the policy implemented. Each
12 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
13 comply with the requisites for validity of rules established by this chapter.

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

16 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
17 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
18 adopted is not valid or effective unless it is:

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

20 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
21 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
22 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
23 considered by the agency.

24 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and
25 this section and unless notice of adoption of the rule is published within 6 months of the publishing of
26 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,
27 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the
28 latest notice in all cases.

29 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
30 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections

1 implemented by rules.

2 (9) If a majority of the members of the administrative code committee notify the committee
 3 presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify
 4 the agency in writing that the committee objects to the proposal notice and will address the objections at
 5 the next committee meeting. Following notice by the committee to the agency, the proposal notice may
 6 not be adopted until publication of the last issue of the register that is published before expiration of the
 7 6-month period during which the adoption notice must be published, unless prior to that time, the
 8 committee meets and does not make the same objection. A copy of the committee's notification to the
 9 agency must be included in the committee's records."

10

11 **Section 2.** Section 2-4-306, MCA, is amended to read:

12 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
 13 shall file with the secretary of state a copy of each rule adopted by it.

14 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
 15 ~~which that~~ are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
 16 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
 17 permanent register of all notices and rules filed, including superseded and repealed rules, which shall that
 18 must be open to public inspection and shall provide copies of any notice or rule upon request of any person.
 19 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
 20 providing ~~such~~ copies.

21 (3) In the event that the administrative code committee has conducted a poll of the legislature in
 22 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
 23 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

24 (4) Each rule ~~shall become~~ is effective after publication in the register, as provided in 2-4-312,
 25 except that:

26 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
 27 date;

28 (b) subject to applicable constitutional or statutory provisions:

29 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
 30 date following publication in the register; and

1 (ii) an emergency rule ~~shall become~~ is effective immediately upon filing with the secretary of state
2 or at a stated date following publication in the register if the agency finds that this effective date is
3 necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a
4 brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall take
5 appropriate measures to make emergency rules known to ~~every~~ each person who may be affected by them.

6 (c) if, following written administrative code committee notification to an agency under 2-4-305(9),
7 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule
8 is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment
9 of the regular session of the legislature that begins after the notice proposing the rule was published by the
10 secretary of state, unless, following the committee's objection under 2-4-406(1):

11 (i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

12 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
13 of the committee members, as communicated in writing to the committee presiding officer and staff, make
14 it comply with the committee's objection and concerns."

15
16 **NEW SECTION. Section 3. Applicability.** [This act] applies to rules objected to under [this act] after
17 [the effective date of this act].

18 -END-

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0601

April 18, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

Dear President Aklestad and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto Senate Bill 271, "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED, UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION; PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE" for the following reasons.

Senate Bill 271 is similar to a bill vetoed during the 1995 legislative session. It would allow a majority of members of the Administrative Code Committee to hold up the implementation of a law passed by both houses of the Legislature and signed by the Governor until after the next regular session of the Legislature adjourned. Using the worst case scenario, five members of the Legislature could delay the effect of a duly-adopted law for two years.

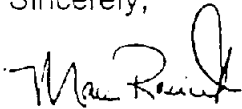
I believe, as I did in 1995, that this proposal is unconstitutional. Administrative rules are extensions of the law, restricted delegations of authority from the legislative branch to the executive branch of government. Giving five members of the Legislature the power to control the executive branch's ability to carry out its responsibilities is a violation of the principle of separation of powers, Article III, section 1 of the Montana Constitution. It infringes upon the executive's duty to faithfully execute the laws, as required by Article VI, section 4(1).

Moreover, allowing five members of a legislative committee to suspend implementation of an administrative rule amounts to giving those five members the power to repeal any law that delegates rulemaking powers to the executive branch. Any act which authorizes five legislators to repeal a law is a violation of Article V, section 11(1) of the Montana Constitution, which requires the action of a majority of the members of the body present and voting before adoption or repeal of a law. In other words, Senate Bill 271 unconstitutionally gives law-making authority to a legislative committee.

There has always been a general concern about agency rulemaking, and, although it has been difficult to ascertain actual examples of rules that are not in conformity with the statute they implement, that concern is understandable. I submit, however, that there are adequate checks and balances already in existence to curb any over-zealous rulemakers. They include the protections afforded the public by the rulemaking process itself, judicial review, additional clarifying legislation, repeal of a rule by the Legislature, supervision by oversight committees, legislative appropriations, control by the executive, and lawful objections by the Administrative Code Committee. In addition, this administration has directed agencies to contact sponsors of legislation when they prepare to issue rules that implement that legislation, a practice which will now become law if House Bill 199 is approved.

Unlike the provisions of Senate Bill 271, the above-mentioned controls limit agency options while keeping the constitutional separation of powers doctrine intact.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Racicot", written in a cursive style.

MARC RACICOT
Governor