

## SENATE BILL NO. 177

INTRODUCED BY C. SQUIRES

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TIME IN WHICH A PETITION MAY BE FILED WITH A DISTRICT COURT TO SET ASIDE AN AGENCY DECISION MADE IN VIOLATION OF THE PUBLIC PARTICIPATION IN GOVERNMENT STATUTES IN TITLE 2, CHAPTER 3, PART 1 OR 2, MCA; AND AMENDING SECTIONS 2-3-114 AND 2-3-213, MCA."

WHEREAS, sections 2-3-114 and 2-3-213, MCA, now require that civil actions brought under either of those sections in District Court to enforce the laws allowing citizen participation in government be brought within 30 days of an agency decision made in violation of those laws; and

WHEREAS, the effect of the 30-day limitation is to prohibit suits brought after that 30-day limit, as was confirmed by the Montana Supreme Court in the case of *Kadillak v. The Anaconda Co.*, 184 M 127 (1979), in which the Supreme Court held that a District Court had no jurisdiction to even consider a case brought after the 30-day period had passed; and

WHEREAS, if an agency, board, or other public entity holds a meeting but does not give notice of a meeting, does not publish an agenda for the meeting, and does not publish minutes of a meeting, there is no way for the public to know whether a meeting occurred, whether a decision was made by the agency, board, or other public entity that is of public interest, or whether the 30-day "clock" has in fact started, except by word of mouth; and

WHEREAS, if a potential plaintiff learns of the meeting by word of mouth at a time too late in the 30-day period to discuss the violation of the participation in government statutes with a potential defendant, it could force a hasty decision to bring suit against the agency, board, or other public entity just because the 30-day period has almost passed.

THEREFORE, it is the determination of the State Administration and Veterans' Affairs Interim Committee that the starting of the 30-day "clock" at the time that a potential plaintiff or petitioner learns or should have learned of a decision made at a meeting held in violation of the law will still apply a limitation to the time that a suit may be brought, but is more fair to a plaintiff or petitioner who might otherwise be precluded from legal action, with the agency, board, or other public entity thereby being rewarded for its secrecy.

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

**Section 1.** Section 2-3-114, MCA, is amended to read:

**"2-3-114. Enforcement.** The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition ~~made within 30 days of the date of the decision~~ of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the petitioner learns, or reasonably should have learned, of the agency's decision."

**Section 2.** Section 2-3-213, MCA, is amended to read:

**"2-3-213. Voidability.** Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void ~~any such a~~ decision must be commenced within 30 days of the ~~decision date~~ on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision."

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