

Unofficial Draft Copy

As of: November 21, 2006 (1:25pm)

LC0612

**** Bill No. ****

Introduced By *****

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, parts 1 and 2, MCA; 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 now require that those actions 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 Annaconda Co., in 1979, in which the Supreme Court held that a District Court had no jurisdiction to even consider a case brought after the 30 period had passed; and

WHEREAS, if a board holds a meeting but does not give notice of a meeting, does not publish a 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 board that is of public interest, and whether the 30 day

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"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 board just because the 30 day period has almost passed; and

WHEREAS, the starting of the 30 day "clock" at the time a potential plaintiff hears about the meeting held in violation of the law will still applies a limitation to the time a suit may be brought but is fairer to a plaintiff who might otherwise be precluded from legal action and the board being thereby 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."

{*Internal References to 2-3-114: None.*}

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

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"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 decision must be commenced within 30 days of the decision."

{*Internal References to 2-3-213: None.*}

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{Name : David S. Niss
Title : Staff Attorney
Agency: Legislative Services Division
Phone : (406) 444-3064
E-Mail: dniss@mt.gov}