

1 HOUSE BILL NO. 190

2 INTRODUCED BY B. MERCER, T. MOORE, M. BERTOGLIO, L. HELLEGAARD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING FOR A
5 STRATEGIC PLANNING PROCESS FOR CERTAIN GOVERNMENT ENTITIES; REQUIRING
6 DEPARTMENTS TO PRODUCE ~~STRATEGIC PLANS AND ANNUAL PERFORMANCE REPORTS~~
7 DEPARTMENT PLANS; PROVIDING FOR CERTAIN PUBLIC COMMENT PROVISIONS; LIMITING JUDICIAL
8 REVIEW; EXEMPTING CERTAIN DEPARTMENTS FROM CERTAIN BUDGET PLANNING PROCESS
9 REQUIREMENTS; REQUIRING THAT ONLY EXISTING RESOURCES MAY BE USED TO IMPLEMENT THE
10 ACT; PROVIDING DIRECTIONS TO THE CODE COMMISSIONER; AMENDING SECTIONS 2-4-102 AND 17-
11 7-111, MCA; REPEALING SECTIONS 2-15-2221, 2-15-2222, 2-15-2223, 2-15-2224, 2-15-2225, AND 2-15-
12 2226, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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16 NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the "State
17 Measurement for Accountable, Responsive, and Transparent Government (SMART) Act".

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19 NEW SECTION. Section 2. Declaration of policy and purpose. (1) It is the public policy of this
20 state ~~to provide for a strategic planning process for state government that results in the development of~~ THAT
21 THE EXECUTIVE BRANCH DEPARTMENTS WILL PUBLISH goals, objectives, and performance measures for each
22 ~~department's programs~~ PROGRAM to facilitate efficient, transparent, accountable, and responsive government
23 service, including annual performance reports to optimize the ~~performance~~ EFFECTIVENESS of state government.

24 (2) ~~The purpose of [sections 1 through 8] is to ensure the development of strategic plans for~~
25 ~~executive branch departments that include performance measures to~~ THIS WILL allow policymakers,
26 stakeholders, and the public to understand what a department intends to accomplish and ~~that~~ TO create a basis
27 to evaluate whether each department has achieved its ~~strategic plan~~ GOALS AND OBJECTIVES and whether the
28 outcomes and outputs merited the use of taxpayer money.

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NEW SECTION. Section 3. Definitions. As used in [sections 1 through 8], the following definitions

apply:

(1) "Annual performance report" means a written annual review and assessment of the outcomes and outputs of a department as compared to its established ~~strategic~~ DEPARTMENT plan and performance measures.

(2) "Department" means each entity listed in 2-15-104(1)(a) through (1)(p), the office of the secretary of state, the office of the state auditor, and the office of public instruction.

(3) "DEPARTMENT PLAN" MEANS A WRITTEN PLAN PREPARED BY A DEPARTMENT THAT CONTAINS THE GOALS, OBJECTIVES, OUTCOMES, AND OUTPUTS THAT A DEPARTMENT INTENDS TO ACCOMPLISH THROUGH ITS PROGRAMS, THAT IS USED TO GUIDE THE ONGOING AND PROPOSED ACTIVITIES OF A DEPARTMENT WITH PERFORMANCE MEASURES FOR TRACKING SUCCESS IN MEETING GOALS AND OBJECTIVES, THAT IS REVISED REGULARLY, AND THAT REMAINS IN EFFECT UNTIL REPLACED OR REVISED.

~~(3)(4)~~ (4) "Goal" means a specific goal or target related to a performance measure that is adopted by a department.

~~(4) "Mission and vision statement" means a written statement describing a department's purpose, what it intends to do, and whom it intends to serve.~~

(5) "Outcomes" means a quantification of the public benefit for Montanans derived from actions by a department.

(6) "Outputs" means a quantification of the number of services that a department produces for Montanans.

(7) "Performance measure" means a written monitoring tool that is designed to help guide government by assessing what a department aspires to achieve ~~pursuant to its strategic plan~~ with respect to the outcomes and outputs of its programs.

(8) "Program" means any activity undertaken by a department pursuant to an appropriation.

~~(9) "Strategic plan" means a written plan prepared by a department that contains the mission and vision statement, goals, and objectives that a department intends to accomplish through its programs, that is used to guide the ongoing and proposed activities of a department with performance measures for tracking~~

1 ~~success in meeting goals and objectives, that is revised regularly, and that remains in effect until replaced or~~
2 ~~revised.~~

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4 NEW SECTION. Section 4. Strategic DEPARTMENT plan. (1) Each department shall ~~engage in the~~
5 ~~process of strategic planning and shall produce a strategic plan~~ STATEMENT OF GOALS, OBJECTIVES, AND
6 PERFORMANCE MEASURES.

7 (2) No later than September 1, 2023, each department shall adopt a ~~strategic~~ DEPARTMENT plan.
8 Each department shall publish a subsequent ~~strategic~~ DEPARTMENT plan no later than ~~July 1, 2026~~ JULY 1, 2025,
9 and a revised plan no later than July 1 every ~~3~~ 2 years afterward.

10 (3) At a minimum, a ~~department's strategic~~ DEPARTMENT plan must include the following
11 components:

12 ~~(a)~~ (A) a mission and vision statement;

13 ~~(b)~~ (A) a description of the functions and programs of the department, including a discussion of the
14 department's priorities;

15 ~~(c)~~ (B) goals of the department that reflect the benefits and outcomes the department expects to
16 achieve on behalf of the public or specific groups through its programs; and

17 ~~(d)~~ (C) specific and measurable performance measures for its programs, including the preferred
18 outcomes and outputs with respect to each performance measure for each department program.

19 (4) Performance measures must:

20 (a) be derived from a department's ~~mission and vision statement~~, goals, objectives, and ~~strategic~~
21 DEPARTMENT plan;

22 (b) focus on a department's efforts in implementing legislative intent and the department's
23 priorities, goals, and objectives;

24 (C) ASSESS A DEPARTMENT'S PREFERRED OUTCOMES AND OUTPUTS:

25 ~~(e)~~ (D) be quantitative when possible; and

26 ~~(d)~~ (E) be designed to provide meaningful and useful information to policymakers and the public.

27 (5) A ~~department's strategic~~ DEPARTMENT plan, including associated performance measures, may
28 be adopted only after consideration of public comment. THE DEPARTMENT PLANS DUE SEPTEMBER 1, 2023, ARE

1 EXEMPT FROM THIS REQUIREMENT. ALL SUBSEQUENT DEPARTMENT PLANS MAY BE ADOPTED ONLY AFTER
2 CONSIDERATION OF PUBLIC COMMENT.

3 (6) Before adopting a new or subsequent ~~strategic~~ DEPARTMENT plan, a department shall:

4 (a) prior to the beginning of the public notice period, give written public notice of the proposed
5 ~~strategic~~ DEPARTMENT plan by:

6 (i) providing prominent notice of the proposed ~~strategic~~ DEPARTMENT plan and any associated
7 hearings on its website; and

8 (ii) publishing notice in the Montana Administrative Register of the proposed ~~strategic~~ DEPARTMENT
9 plan, any associated hearings, and the dates during which public comment will be accepted;

10 (b) hold at least one public hearing on the proposed ~~strategic~~ DEPARTMENT plan;

11 (c) accept public comment for at least 30 days; and

12 (d) consider written and oral comments made during the public comment period and post
13 ~~transcripts of public hearings and~~ ANY written comments on the proposed ~~strategic~~ DEPARTMENT plan on its
14 website.

15 (7) The ~~strategic~~ DEPARTMENT plan adopted by a department must be posted on the websites of
16 the department and the office of budget and program planning.

17

18 NEW SECTION. Section 5. Annual performance report. (1) No later than December 1, 2024, and
19 no later than October 1 of each year afterward, each department shall produce an annual performance report
20 for the fiscal year that concluded in the same year and distribute it as provided in subsections (4) and (5).

21 (2) The annual performance report must focus on measuring outcomes and outputs WITH RESPECT
22 TO THE PERFORMANCE MEASURES rather than processes undertaken.

23 (3) In the annual performance report, a department shall assess whether existing performance
24 measures continue to relate logically to goals and other elements of the ~~strategic~~ DEPARTMENT plan and to
25 measure preferred outcomes AND OUTPUTS for department programs.

26 (4) An annual performance report of a department must be posted on the websites of the
27 department and the office of budget and program planning. The annual performance report must include a
28 hyperlink to the department's ~~strategic~~ DEPARTMENT plan posted on the department's official website.

1 (5) By December 1 of each year, in accordance with 5-11-210, the annual performance report of
2 each department must be provided to the legislative finance committee and the appropriate legislative policy
3 interim committee provided for in Title 5, chapter 5, part 2.
4

5 **NEW SECTION. Section 6. Periodic assessment, audit, and revision of performance measures.**
6 ~~Performance measures must be revised no less frequently than every 3 years.~~ Interim committees and interim
7 budget subcommittees, if provided for in law, shall use performance data to review a department's ~~strategie~~
8 planning documents as the documents relate to prospective legislation and budgets. If directed by the
9 legislative audit committee, the legislative audit division may evaluate the methods used by departments to
10 ensure the accuracy of data collection and reporting.
11

12 **NEW SECTION. Section 7. Judicial review.** A department's consideration of input from public
13 comment submitted pursuant to [section 4] in developing or revising a ~~strategie~~ DEPARTMENT plan is not subject
14 to judicial review.
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16 **NEW SECTION. Section 8. Fiscal impact.** A department may use only existing resources to
17 implement the provisions of [sections 1 through 7].
18

19 **Section 9.** Section 2-4-102, MCA, is amended to read:

20 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

21 (1) "Administrative rule review committee" or "committee" means the appropriate committee
22 assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

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

25 (i) the state board of pardons and parole, which is exempt from the contested case and judicial
26 review of contested cases provisions contained in this chapter. However, the board is subject to the remainder
27 of the provisions of this chapter.

28 (ii) the supervision and administration of a penal institution with regard to the institutional

1 supervision, custody, control, care, or treatment of youth or prisoners;

2 (iii) the board of regents and the Montana university system;

3 (iv) the financing, construction, and maintenance of public works;

4 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
5 252 and 69-3-837.

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

8 (3) "ARM" means the Administrative Rules of Montana.

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

12 (5) (a) "Interested person" means a person who has expressed to the agency an interest
13 concerning agency actions under this chapter and has requested to be placed on the agency's list of interested
14 persons as to matters of which the person desires to be given notice.

15 (b) The term does not extend to contested cases.

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

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

21 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of
22 right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any
23 person as a party for limited purposes.

24 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
25 agency, or public organization of any character.

26 (10) "Register" means the Montana Administrative Register.

27 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
28 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice

1 requirements of an agency. The term includes the amendment or repeal of a prior rule.

2 (b) The term does not include:

3 (i) statements concerning only the internal management of an agency or state government and
4 not affecting private rights or procedures available to the public, including rules implementing the state
5 personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and
6 human resource system;

7 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

8 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of
9 the rules is indicated to the public by means of signs or signals;

10 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
11 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating
12 to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of
13 the rules is indicated to the public by means of signs or signals;

14 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
15 accordance with 2-4-306 and must be published in the ARM; ~~or~~

16 (vi) game parameters approved by the state lottery commission relating to a specific lottery game.

17 This subsection (11)(b)(vi) does not exempt generally applicable policies governing the state lottery that are
18 otherwise subject to the Montana Administrative Procedure Act; or

19 (vii) strategic planning documents governed by [sections 1 through 8] and published as provided in
20 [sections 1 through 8].

21 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding
22 matters that the agency knows to be of widespread citizen interest. These matters include issues involving a
23 substantial fiscal impact to or controversy involving a particular class or group of individuals.

24 (b) The term does not extend to contested cases.

25 (13) "Small business" means a business entity, including its affiliates, that is independently owned
26 and operated and that employs fewer than 50 full-time employees.

27 (14) "Substantive rules" are either:

28 (a) legislative rules, which if adopted in accordance with this chapter and under expressly

1 delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted
2 are invalid; or

3 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
4 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

5 (15) "Supplemental notice" means a notice that amends the proposed rules or changes the timeline
6 for public participation."
7

8 **Section 10.** Section 17-7-111, MCA, is amended to read:

9 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**

10 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
11 need information that is consistent and accurate. Necessary information includes detailed disbursements by
12 fund type for each agency and program for the appropriate time period, recommendations for creating a
13 balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

14 (b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst
15 shall by agreement:

16 (i) establish necessary standards, formats, and other matters necessary to share information
17 between the agencies and to ensure that information is consistent and accurate for the preparation of the
18 state's budget; and

19 (ii) provide for the collection and provision of budgetary and financial information that is in addition
20 to or different from the information otherwise required to be provided pursuant to this section.

21 (2) In the preparation of a state budget, the budget director shall, not later than the date specified
22 in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of
23 budget estimates by the budget director. These forms must be prescribed by the budget director to procure the
24 information required by subsection (3). The forms must be submitted to the budget director by the date provided
25 in 17-7-112(2), or the agency's budget is subject to preparation based upon estimates as provided in 17-7-
26 112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or
27 the instructions given for completing the forms.

28 (3) The agency budget request must set forth a balanced financial plan for the agency completing

1 the forms for each fiscal year of the ensuing biennium. The plan must consist of:

2 (a) a consolidated agency budget summary of funds subject to appropriation, as provided in 17-8-
3 101, for the current base budget expenditures, including statutory appropriations, and for each present law
4 adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel
5 positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total
6 anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing
7 biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in
8 progress;

9 (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for
10 the current biennium and estimated for the subsequent biennium;

11 (c) a statement of the agency mission and a statement of goals and objectives for each program of
12 the agency. The goals and objectives must include, in a concise form, sufficient specific information and
13 quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and
14 its programs and to allow a determination, at some future date, on whether the agency has succeeded in
15 attaining its goals and objectives. An agency that has complied with the requirements provided in [sections 1
16 through 8] is exempt from the provision of this subsection (3)(c).

17 (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated
18 FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by
19 program;

20 (e) actual disbursements for the completed fiscal year of the current biennium, estimated
21 disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by
22 disbursement category;

23 (f) for agencies with more than 20 FTE, a plan to reduce the proposed base budget for the
24 general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if
25 directed by the budget director. Each agency plan must include base budget reductions that reflect the required
26 percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the
27 calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their
28 own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or

1 fund balances to the general fund. The plan must include:

2 (i) a prioritized list of services that would be eliminated or reduced;

3 (ii) for each service included in the prioritized list, the savings that would result from the elimination
4 or reduction; and

5 (iii) the consequences or impacts of the proposed elimination or reduction of each service.

6 (g) a reference for each new information technology proposal stating whether the new proposal is
7 included in the approved agency information technology plan as required in 2-17-523;

8 (h) energy cost saving information as required by 90-4-616; and

9 (i) other information the budget director feels is necessary for the preparation of a budget.

10 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
11 17-7-112:

12 (a) detailed recommendations for capital developments for:

13 (i) local infrastructure projects;

14 (ii) funding for energy development-impacted areas; and

15 (iii) the state long-range building program. Each recommendation for the capital developments
16 long-range building program must be presented by institution, agency, or branch, by funding source, with a
17 description of each proposed project.

18 (b) a statewide project budget summary as provided in 2-17-526;

19 (c) the proposed pay plan schedule for all executive branch employees at the program level by
20 fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule
21 under this subsection is not an unfair labor practice under 39-31-401.

22 (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2,
23 part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and
24 development grants program under Title 90, chapter 2, part 11, and the Montana coal endowment program
25 under Title 90, chapter 6, part 7.

26 (5) The board of regents shall submit, with its budget request for each university unit in accordance
27 with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this
28 subsection (5). The report must include the following information for each year of the biennium, contrasted with

1 the same information for the last-completed fiscal year and the fiscal year in progress:

2 (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

3 (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each
4 outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal
5 funding requirements for each bond indenture; and

6 (c) a schedule showing the total funds available from each bond indenture and its associated
7 accounts, with a list of commitments and planned expenditures from the accounts, itemized by revenue source
8 and project for each year of the current and ensuing bienniums.

9 (6) (a) The department of revenue shall make Montana individual income tax information available
10 by removing names, addresses, and social security numbers and substituting in their place a state accounting
11 record identifier number. Except for the purposes of complying with federal law, the department may not alter
12 the data in any other way.

13 (b) The department of revenue shall provide the name and address of a taxpayer on written
14 request of the budget director when the values on the requested return, including estimated payments, are
15 considered necessary by the budget director to properly analyze state revenue and are of a sufficient
16 magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the
17 effect of the return or payments on the analysis being performed.

18 (7) The following provisions apply to the development of the budget request for the department of
19 public health and human services:

20 (a) Adjustments to the present law base must be separated by each category described in 17-7-
21 102(10) in order for the legislature to determine the changes that are attributable to legally mandated workload,
22 caseload, or enrollment increases or decreases, constitutional or statutory schedules or formulas, inflationary or
23 deflationary adjustments, and elimination of nonrecurring appropriations.

24 (b) Inflation adjustments to the present law base for the institutions or services described in
25 subsection (7)(c) must be based on a reliable national index for the particular service or a similar service or the
26 consumer price index for urban wage earners and workers. An inflation adjustment that is greater than the
27 applicable national index or consumer price index must be presented as a new proposal.

28 (c) Subsection (7)(b) applies to inflation adjustments for:

- 1 (i) the department-operated institutions described in 53-1-602; and
- 2 (ii) services provided by private sector businesses and other entities that provide direct services to
- 3 beneficiaries in medicaid programs that are administered by the department divisions responsible for
- 4 overseeing services for the elderly and for persons with mental illness, physical disabilities, or developmental
- 5 disabilities."

6

7 **NEW SECTION. Section 11. Repealer.** The following sections of the Montana Code Annotated are
8 repealed:

9 2-15-2221. Definitions.

10 2-15-2222. Policy -- performance measures.

11 2-15-2223. Criteria for measurement system.

12 2-15-2224. System requirements -- input from legislative audit division.

13 2-15-2225. Legislative use of performance measures.

14 2-15-2226. Department and agency use of performance measures.

15

16 **NEW SECTION. Section 12. Directions to code commissioner.** If [this act] is passed and
17 approved, then the code commissioner is directed to strike the reference in 5-11-222(3)(c)(i) to performance
18 data required by 2-15-2225.

19

20 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 8] are intended to be
21 codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through 8].

22

23 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

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- END -