

HOUSE BILL NO. 414

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMPLEMENTATION OF MONTANA'S
 FEDERAL MANDATES ACT; REVISING THE LEGISLATIVE DECLARATION; SPECIFYING CRITERIA FOR
 NOTICES OF ADMINISTRATIVE RULEMAKING IMPLEMENTING FEDERAL MANDATES; REQUIRING
 INTERIM COMMITTEES TO REVIEW AGENCIES' COMPLIANCE WITH THE FEDERAL MANDATES ACT;
 PROVIDING FOR INCLUSION IN THE STATE BUDGETING PROCESS OF CERTAIN INFORMATION AND
 RECOMMENDATIONS CONCERNING FEDERAL MANDATES; AMENDING SECTIONS 2-1-402, 2-1-405,
 2-1-407, 2-1-408, 2-4-302, 5-5-215, AND 17-7-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-1-402, MCA, is amended to read:

"2-1-402. Legislative declaration. (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes if the federal programs do not usurp the state of Montana's political sovereignty under the 10th amendment of the United States constitution.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to constitutionally implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with the United States constitution and Montana policy and exceed the lawful constitutional authority of the federal government or are not required by constitutional federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of

1 Montana to govern themselves under a federal system of government; and

2 (ii) any implementation of federal policies in and for Montana by federal executive branch agencies that
3 is contrary to the United States constitution and fundamental notions of federalism and self-determination must
4 be identified, ~~and countered, and resisted.~~

5 (2) The legislature further finds and declares that:

6 (a) there is an urgent need to modify federal mandates because the implementation of these mandates
7 by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does
8 not properly respect the rights of local governments, citizens, and the state;

9 (b) the state government has an obligation to the public to do what is necessary to protect the rights of
10 Montana citizens ~~under federal law~~ while minimizing or eliminating any additional cost or regulatory burden on
11 any citizen of the state;

12 (c) the 10th amendment to the United States constitution directs that powers that are not delegated to
13 the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the
14 federal union, has constitutional authority to enact laws protecting the environment of the state and safeguarding
15 the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been
16 ignored by the federal government. The federal government has intruded more and more into areas that must
17 be left to the states. It is essential that the dilution of the authority of state and local governments be halted and
18 reversed and that the provisions of the 10th amendment be accorded proper application and respect.

19 (d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines,
20 and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do
21 not understand the needs and priorities of the citizens of Montana;

22 (e) the citizens of this state can create and ~~wish~~ hold the political will to create innovative solutions to
23 Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic
24 substitutions of state programs are handled ~~does not allow~~ deprives the state the flexibility it needs and by right
25 possesses. It is not possible for the state of Montana to effectively and efficiently implement the provisions of
26 federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal
27 requirements is shifted to the person or agency who asserts the insufficiency.

28 (f) the provisions of this part will better balance the exercise of the powers of the federal government and
29 the powers reserved to the states. In addition, the application of this part ultimately will bring about greater
30 protection for the state and the ~~nation~~ federal union because it will direct the state to implement constitutional

1 federal statutes at the least possible cost and will make more money available for other needs.

2 (g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995,
3 that are implemented in Montana comply with the United States constitution and state policy as established by
4 the legislature;

5 (h) nothing in this part may be construed to create a private cause of action or to limit the right and power
6 of the state of Montana to protect its political sovereignty, as recognized and protected by the 10th amendment
7 of the United States constitution, from unconstitutional mandates and usurpation of the federal government."

8

9 **Section 2.** Section 2-1-405, MCA, is amended to read:

10 **"2-1-405. Requirement for budget recommendation -- reporting on federal mandates -- savings.**

11 (1) Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal
12 mandates, the governor shall require that the state agency provide information regarding any monetary savings
13 for the state and any reduction in regulatory burdens on local governments and on the public that could be or
14 have been achieved through the development of state policies that meet the intent of applicable federal statutes
15 but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also
16 provide advice to the governor regarding any changes in state statutes that are necessary to provide the state
17 agency the authority to implement state policies in such a way that will as to create additional savings or greater
18 reductions in regulatory burdens.

19 (2) The governor shall review and compile the information received from state agencies pursuant to this
20 section and shall:

21 (a) present the information to the legislative finance committee prior to recommending a budget to the
22 legislature; and

23 (b) include recommendations regarding any changes in state statutes that are necessary to provide the
24 state agency with the authority to implement state policies in a way that will create additional savings or greater
25 reductions in regulatory burdens in the governor's budget based upon the information, state statutes, and the
26 United States constitution."

27

28 **Section 3.** Section 2-1-407, MCA, is amended to read:

29 **"2-1-407. Report -- recommendations.** (1) The governor shall examine the information received
30 pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next

1 regular session that includes the following:

2 (a) recommendations regarding contracts that the state may enter into with specified persons or entities
3 to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

4 (b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions
5 of 2-1-405.

6 (2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not
7 serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an
8 executive order declaring the intention of Montana to not implement the mandate and may direct the attorney
9 general to vigorously represent the state of Montana in any action that results from or that is necessary to effect
10 the executive order.

11 (3) The governor shall provide a copy of the report required in subsection (1) to the legislative council.

12 (4) The legislative council shall provide a copy of the report received pursuant to subsection (3) to the
13 interim committees established pursuant to 5-5-202, 5-5-229, and 5-5-231, the legislative audit committee, the
14 legislative finance committee, and the environmental quality council and shall make a copy of the report available
15 to the public on the internet."

16

17 **Section 4.** Section 2-1-408, MCA, is amended to read:

18 **"2-1-408. Legislative review and oversight.** (1) In exercising its authority as an equal branch of state
19 government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect
20 the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the
21 executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by
22 the legislature, immediately provide any information prepared, compiled, developed, detailed, described,
23 referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

24 (2) In receiving the information described in subsection (1), the legislature is bound by the provisions
25 of Article II, sections 9 and 10, of the Montana constitution.

26 (3) For the purposes of this section, the legislature includes the senate and the house of representatives,
27 acting jointly or separately, and includes the legislative council and legislative finance committee.

28 (4) The legislature may request the assistance of any staff employed by the legislature, including the
29 legislative auditor."

30

1 **Section 5.** Section 2-4-302, MCA, is amended to read:

2 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
3 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
4 a statement of either the terms or substance of the intended action or a description of the subjects and issues
5 involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which
6 interested persons may present their views on the proposed action. The reasonable necessity must be written
7 in plain, easily understood language.

8 (b) The agency shall state in the proposal notice the date on which and the manner in which contact was
9 made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was
10 given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the
11 agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was
12 contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and
13 for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

14 (c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay
15 or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

16 (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

17 (ii) the number of persons affected.

18 (d) If the agency proposes to adopt or amend a rule to respond to any mandates contained in a federal
19 statute, the notice must state how the criteria in 2-1-404(2) have been applied.

20 (2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as
21 provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to
22 interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings,
23 and to the office of any professional, trade, or industrial society or organization or member of those entities who
24 has filed a request with the appropriate administrative rule review committee when the request has been
25 forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of
26 interested persons and the subject or subjects in which each person on the list is interested. A person who
27 submits a written comment or attends a hearing in regard to proposed agency action under this part must be
28 informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice
29 an advisement explaining how persons may be placed on the list of interested persons and if it complies with
30 subsection (7).

1 (b) The appropriate administrative rule review committee shall forward a list of all organizations or
2 persons who have submitted a request to be informed of agency actions to the agencies that the committee
3 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request
4 of any person requesting to be added to or deleted from the list.

5 (c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the
6 agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other
7 electronic communications system available to the public.

8 (d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice
9 for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator
10 who was the primary sponsor of the legislation to:

11 (A) obtain the legislator's comments;

12 (B) inform the legislator of the known dates by which each step of the rulemaking process must be
13 completed; and

14 (C) provide the legislator with information about the time periods during which the legislator may
15 comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative
16 rule review committee.

17 (ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant
18 to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

19 (iii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as
20 required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor contacted under
21 this subsection (2)(d).

22 (3) If a statute provides for a method of publication different from that provided in subsection (2), the
23 affected agency shall comply with the statute in addition to the requirements contained in this section. However,
24 the notice period may not be less than 30 days or more than 6 months.

25 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
26 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,
27 or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed
28 for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that
29 opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons
30 who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate

1 administrative rule review committee, or by an association having not less than 25 members who will be directly
2 affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall
3 schedule an oral hearing.

4 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case
5 procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by
6 statute, nothing in this section alters that requirement.

7 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
8 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a
9 new proposal for purposes of compliance with this chapter.

10 (7) At the commencement of a hearing on the intended action, the person designated by the agency to
11 preside at the hearing shall:

12 (a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the
13 register; and

14 (b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an
15 opportunity to place their names on the list.

16 (8) (a) For purposes of contacting primary sponsors under subsections (2)(a) and (2)(d), a current or
17 former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail
18 address, and telephone number on file with the secretary of state. The secretary of state shall update the contact
19 information whenever the secretary of state receives corrected information from the legislator. An agency
20 proposing rules shall consult the register when providing sponsor contact.

21 (b) An agency has complied with the primary bill sponsor contact requirements of this section when the
22 agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone
23 number on file with the secretary of state pursuant to subsection (8)(a)."

24

25 **Section 6.** Section 5-5-215, MCA, is amended to read:

26 **"5-5-215. Duties of interim committees.** (1) Each interim committee shall:

27 (a) review administrative rules within its jurisdiction;

28 (b) subject to 5-5-217(3), conduct interim studies as assigned;

29 (c) monitor the operation of assigned executive branch agencies with specific attention to the following:

30 (i) identification of issues likely to require future legislative attention;

1 (ii) opportunities to improve existing law through the analysis of problems experienced with the application
2 of the law by an agency; ~~and~~

3 (iii) experiences of the state's citizens with the operation of an agency that may be amenable to
4 improvement through legislative action; and

5 (iv) identification and review of programs that implement federal statutes, including an agency's
6 compliance with the requirements of the Federal Mandates Act contained in Title 2, chapter 1, part 4;

7 (d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;
8 and

9 (e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to
10 existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion
11 of its work.

12 (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state
13 may require for presentation to the next regular session of the legislature.

14 (3) Each interim committee shall report to the legislative council on its oversight activities conducted
15 pursuant to subsection (1)(c)(iv) and shall make a copy of its report available on the internet.

16 ~~(3)(4)~~ The legislative services division shall keep accurate records of the activities and proceedings of
17 each interim committee."
18

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

20 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**
21 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
22 need information that is consistent and accurate. Necessary information includes detailed disbursements by fund
23 type for each agency and program for the appropriate time period, recommendations for creating a balanced
24 budget, and recommended disbursements and estimated receipts by fund type and fund category.

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

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

30 (ii) provide for the collection and provision of budgetary and financial information that is in addition to or

1 different from the information otherwise required to be provided pursuant to this section.

2 (2) In the preparation of a state budget, the budget director shall, not later than the date specified in
3 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget
4 estimates by the budget director. These forms must be prescribed by the budget director to procure the
5 information required by subsection (3). The forms must be submitted to the budget director by the date provided
6 in 17-7-112(2), or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5).
7 The budget director may refuse to accept forms that do not comply with the provisions of this section or the
8 instructions given for completing the forms. The forms must include a section that allows an agency to comply
9 with the provisions of 2-1-405.

10 (3) Subject to subsections (7) and (8), the agency budget request must set forth a balanced financial plan
11 for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

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

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

20 (c) a statement of the agency mission and a statement of goals and objectives for each program of the
21 agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable
22 information to enable the legislature to formulate an appropriations policy regarding the agency and its programs
23 and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals
24 and objectives.

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

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

30 (f) for agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general

1 appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the
2 budget director. Each agency plan must include base budget reductions that reflect the required percentage
3 reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations
4 of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff
5 under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund
6 balances to the general fund. The plan must include:

7 (i) a prioritized list of services that would be eliminated or reduced;
8 (ii) for each service included in the prioritized list, the savings that would result from the elimination or
9 reduction; and

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

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

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

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

15 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
16 17-7-112:

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

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

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

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

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

- 1 (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;
- 2 (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding
3 bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding
4 requirements for each bond indenture; and
- 5 (c) a schedule showing the total funds available from each bond indenture and its associated accounts,
6 with a list of commitments and planned expenditures from the accounts, itemized by revenue source and project
7 for each year of the current and ensuing bienniums.
- 8 (6) (a) The department of revenue shall make Montana individual income tax information available by
9 removing names, addresses, and social security numbers and substituting in their place a state accounting record
10 identifier number. Except for the purposes of complying with federal law, the department may not alter the data
11 in any other way.
- 12 (b) The department of revenue shall provide the name and address of a taxpayer on written request of
13 the budget director when the values on the requested return, including estimated payments, are considered
14 necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially
15 affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or
16 payments on the analysis being performed.
- 17 (7) (a) The department of public health and human services' budget request for the 2013 biennium must
18 identify changes necessary to reduce the 2013 biennium expenditures to the level funded in the general
19 appropriations act. The department may include changes such as reducing administrative costs, developing more
20 cost-efficient methods to deliver services, limiting the number of medicaid services that adults may receive,
21 changing medicaid services included in the Montana medicaid state plan, changing eligibility or level-of-care
22 requirements for medicaid waiver services, limiting or changing services that are fully state-funded, or
23 implementing other initiatives that reduce state funds. Achieving the necessary general fund reduction in the 2013
24 biennium budget request may not include shifting costs to state special revenue funds.
- 25 (b) The department of public health and human services shall prepare a work plan with goals,
26 milestones, and measures to guide its review of alternatives to identify, evaluate, and select initiatives to reduce
27 ongoing state spending in its 2013 biennium budget submission. The department shall submit the work plan,
28 goals, milestones, and measures to the legislative finance committee at its first meeting after the adjournment
29 of the 2009 legislative session for its review and comment. The department shall provide an update of its budget
30 reduction for review and comment at each legislative finance committee meeting in a format developed with and

1 agreed upon by the committee.

2 (8) Each agency budget request for the 2013 biennium must include the adjustments to present law base
3 specified in 17-7-102(10)(b)."

4

5 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2011.

6

- END -