

## 1 SENATE BILL NO. 145

2 INTRODUCED BY B. LAKE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DELEGATION OF AUTHORITY BY THE  
 5 LEGISLATURE TO AN AGENCY TO ADOPT A RULE IS NOT COMPLETE UNLESS THE AUTHORITY TO  
 6 ADOPT THE RULE HAS BEEN CONFIRMED BY AN ADMINISTRATIVE RULE REVIEW COMMITTEE;  
 7 AMENDING SECTIONS 2-4-305, 5-5-215, 5-5-223, 5-5-224, 5-5-225, 5-5-226, 5-5-227, 5-5-228, 5-5-230, AND  
 8 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

9

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

11

12 NEW SECTION. **Section 1. Rule review committees required to confirm delegation.** (1)

13 Notwithstanding any law to the contrary, a delegation of authority from the legislature to an agency to adopt a rule  
 14 is not complete until an administrative rule review committee has confirmed the delegation of authority to adopt  
 15 the rule. A decision by a committee pursuant to this section does not affect the ability of a committee to otherwise  
 16 review a rule pursuant to Title 2, chapter 4, part 4.

17 (2) The legislative council may adopt rules to implement this section.

18 (3) A law may not be held to amend this section unless it does so expressly.

19

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

21 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully  
 22 consider written and oral submissions respecting the proposed rule, including comments submitted by the primary  
 23 sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that  
 24 initially implements legislation.

25 (b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for  
 26 and against its adoption, incorporating in the statement the reasons for overruling the considerations urged  
 27 against its adoption. If substantial differences exist between the rule as proposed and as adopted and the  
 28 differences have not been described or set forth in the adopted rule as that rule is published in the register, the  
 29 differences must be described in the statement of reasons for and against agency action. When written or oral  
 30 submissions have not been received, an agency may omit the statement of reasons.

1 (ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the  
2 primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not  
3 incorporated into the adopted rule.

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

7 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority  
8 pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must  
9 include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to  
10 implement. A substantive rule may not be proposed or adopted unless:

11 (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter  
12 of the rule as a subject upon which the agency shall or may adopt rules; or

13 (b) the rule implements and relates to a subject matter or an agency function that is clearly and  
14 specifically included in a statute to which the grant of rulemaking authority extends.

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

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

21 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules  
22 to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,  
23 amendment, or repeal of a rule is not valid or effective unless it is:

24 (a) the delegation of authority by the legislature to the agency to adopt a rule has been completed in  
25 accordance with [section 1];

26 (a)(b) the rule is consistent and not in conflict with the statute; and

27 (b)(c) the rule is reasonably necessary to effectuate the purpose of the statute. A statute mandating that  
28 the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable  
29 necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity  
30 requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and

1 the rationale for its intended action and for the particular approach that it takes in complying with the mandate  
2 to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly  
3 demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking  
4 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and  
5 considered by the agency. A statement that merely explains what the rule provides is not a statement of the  
6 reasonable necessity for the rule.

7 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302,  
8 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the  
9 publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial  
10 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of  
11 the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial  
12 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either  
13 proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be  
14 determined with reference to the latest notice in all cases.

15 (8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies  
16 in citations of authority for rules and in citations of sections implemented by rules.

17 (b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the  
18 adoption notice to correct deficiencies in a statement of reasonable necessity.

19 (c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for  
20 reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a  
21 clerical nature, the agency shall allow additional time for oral or written comments from the same interested  
22 persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor  
23 notification was required under 2-4-302, and from any other person who offered comments or appeared at a  
24 hearing already held on the proposed rule.

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

1 make the same objection. A copy of the committee's notification to the agency must be included in the  
2 committee's records."

3

4 **Section 3.** Section 5-5-215, MCA, is amended to read:

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

6 ~~(a)~~ confirm, in the manner provided in [section 1], a delegation of authority to adopt a rule;

7 ~~(a)~~~~(b)~~ review administrative rules within its jurisdiction;

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

9 ~~(c)~~~~(d)~~ monitor the operation of assigned executive branch agencies with specific attention to the  
10 following:

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

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

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

16 ~~(d)~~~~(e)~~ review proposed legislation of assigned agencies or entities as provided in the joint legislative  
17 rules; and

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

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

23 (3) The legislative services division shall keep accurate records of the activities and proceedings of each  
24 interim committee."

25

26 **Section 4.** Section 5-5-223, MCA, is amended to read:

27 **"5-5-223. Economic affairs interim committee.** The economic affairs interim committee has rulemaking  
28 authority delegation, administrative rule review, draft legislation review, program evaluation, and monitoring  
29 functions for the following executive branch agencies and the entities attached to agencies for administrative  
30 purposes:

- 1 (1) department of agriculture;
- 2 (2) department of commerce;
- 3 (3) department of labor and industry;
- 4 (4) department of livestock;
- 5 (5) office of the state auditor and insurance commissioner; and
- 6 (6) office of economic development."

7

8 **Section 5.** Section 5-5-224, MCA, is amended to read:

9 **"5-5-224. Education and local government interim committee.** (1) The education and local  
10 government interim committee shall act as a liaison with local governments. The education and local government  
11 interim committee has rulemaking authority delegation, administrative rule review, draft legislation review,  
12 program evaluation, and monitoring functions for the following executive branch agencies and the entities  
13 attached to agencies for administrative purposes:

- 14 (a) state board of education;
- 15 (b) board of public education;
- 16 (c) board of regents of higher education; and
- 17 (d) office of public instruction.

18 (2) The committee shall:

19 (a) provide information to the board of regents in the following areas:

- 20 (i) annual budget allocations;
- 21 (ii) annual goal statement development;
- 22 (iii) long-range planning;
- 23 (iv) outcome assessment programs; and
- 24 (v) any other area that the committee considers to have significant educational or fiscal policy impact;
- 25 (b) periodically review the success or failure of the university system in meeting its annual goals and  
26 long-range plans;
- 27 (c) periodically review the results of outcome assessment programs;
- 28 (d) develop mechanisms to ensure strict accountability of the revenue and expenditures of the university  
29 system;
- 30 (e) study and report to the legislature on the advisability of adjustments to the mechanisms used to

- 1 determine funding for the university system, including criteria for determining appropriate levels of funding;
- 2 (f) act as a liaison between both the legislative and executive branches and the board of regents;
- 3 (g) encourage cooperation between the legislative and executive branches and the board of regents;
- 4 (h) promote and strengthen local government through recognition of the principle that strong
- 5 communities, with effective, democratic governmental institutions, are one of the best assurances of a strong
- 6 Montana;
- 7 (i) bring together representatives of state and local government for consideration of common problems;
- 8 (j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and
- 9 intergovernmental cooperation;
- 10 (k) identify and promote the most desirable allocation of state and local government functions,
- 11 responsibilities, and revenue;
- 12 (l) promote concise, consistent, and uniform regulation for local government;
- 13 (m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and
- 14 less competitive fiscal and administrative relationships between and among state and local governments;
- 15 (n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;
- 16 (o) make recommendations to the legislature, executive branch agencies, and local governing bodies
- 17 concerning:
- 18 (i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and
- 19 uniform guidance and regulations for local government;
- 20 (ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between
- 21 levels of government;
- 22 (iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative
- 23 relationships among levels of government; and
- 24 (iv) training programs and technical assistance for local government officers and employees that will
- 25 promote effectiveness and efficiency in local government; and
- 26 (p) conduct interim studies as assigned."
- 27

28 **Section 6.** Section 5-5-225, MCA, is amended to read:

29 **"5-5-225. Children, families, health, and human services interim committee.** The children, families,

30 health, and human services interim committee has rulemaking authority delegation, administrative rule review,

1 draft legislation review, program evaluation, and monitoring functions for the department of public health and  
2 human services and the entities attached to the department for administrative purposes."

3

4 **Section 7.** Section 5-5-226, MCA, is amended to read:

5 **"5-5-226. Law and justice interim committee.** The law and justice interim committee has rulemaking  
6 authority delegation, administrative rule review, draft legislation review, program evaluation, and monitoring  
7 functions for the department of corrections and the department of justice and the entities attached to the  
8 departments for administrative purposes. The committee shall act as a liaison with the judiciary."

9

10 **Section 8.** Section 5-5-227, MCA, is amended to read:

11 **"5-5-227. Revenue and transportation interim committee -- powers and duties -- revenue**  
12 **estimating and use of estimates.** (1) The revenue and transportation interim committee has rulemaking  
13 authority delegation, administrative rule review, draft legislation review, program evaluation, and monitoring  
14 functions for the department of revenue and the department of transportation and the entities attached to the  
15 departments for administrative purposes.

16 (2) (a) The committee must have prepared by December 1 for introduction during each regular session  
17 of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected  
18 to be available for legislative appropriation.

19 (b) The committee may prepare for introduction during a special session of the legislature in which a  
20 revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The  
21 revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

22 (3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current  
23 revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the  
24 legislature's estimates and the assumptions underlying the estimates will be used by all agencies with  
25 responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

26 (4) The legislative services division shall provide staff assistance to the committee. The committee may  
27 request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the  
28 department of revenue, and any other agency that has information regarding any of the tax or revenue bases of  
29 the state."

30

1           **Section 9.** Section 5-5-228, MCA, is amended to read:

2           **"5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration  
3 and veterans' affairs interim committee has rulemaking authority delegation, administrative rule review, draft  
4 legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for  
5 the following executive branch agencies and the entities attached to the agencies for administrative purposes:

6           (a) department of administration;

7           (b) department of military affairs; and

8           (c) office of the secretary of state.

9           (2) The committee shall:

10           (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based  
11 on reports from the teachers' retirement board, the public employees' retirement board, and the board of  
12 investments, and study and evaluate the equity and benefit structure of the state's public employee retirement  
13 systems;

14           (b) establish principles of sound fiscal and public policy as guidelines;

15           (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy  
16 principles;

17           (d) solicit and review proposed statutory changes to any of the state's public employee retirement  
18 systems;

19           (e) report to the legislature on each legislative proposal reviewed by the committee. The report must  
20 include but is not limited to:

21           (i) a summary of the fiscal implications of the proposal;

22           (ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

23           (iii) an analysis of the soundness of the proposal as a matter of public policy;

24           (iv) any amendments proposed by the committee; and

25           (v) the committee's recommendation on whether the proposal should be enacted by the legislature.

26           (f) attach the committee's report to any proposal that the committee considered and that is or has been  
27 introduced as a bill during a legislative session; and

28           (g) publish, for legislators' use, information on the state's public employee retirement systems.

29           (3) The committee may:

30           (a) specify the date by which proposals affecting a retirement system must be submitted to the committee



1 for the review contemplated under subsection (2)(d); and

2 (b) request personnel from state agencies, including boards, political subdivisions, and the state public  
3 employee retirement systems, to furnish any information and render any assistance that the committee may  
4 request."

5

6 **Section 10.** Section 5-5-230, MCA, is amended to read:

7 **"5-5-230. Energy and telecommunications interim committee.** The energy and telecommunications  
8 interim committee has rulemaking authority delegation, administrative rule review, draft legislation review,  
9 program evaluation, and monitoring functions for the department of public service regulation and the public  
10 service commission."

11

12 **Section 11.** Section 75-1-324, MCA, is amended to read:

13 **"75-1-324. Duties of environmental quality council.** The environmental quality council shall:

14 (1) gather timely and authoritative information concerning the conditions and trends in the quality of the  
15 environment, both current and prospective, analyze and interpret the information for the purpose of determining  
16 whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set  
17 forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions  
18 and trends;

19 (2) review and appraise the various programs and activities of the state agencies, in the light of the policy  
20 set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are  
21 contributing to the achievement of the policy and make recommendations to the governor and the legislature with  
22 respect to the policy;

23 (3) develop and recommend to the governor and the legislature state policies to foster and promote the  
24 improvement of environmental quality to meet the conservation, social, economic, health, and other requirements  
25 and goals of the state;

26 (4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and  
27 environmental quality;

28 (5) document and define changes in the natural environment, including the plant and animal systems,  
29 and accumulate necessary data and other information for a continuing analysis of these changes or trends and  
30 an interpretation of their underlying causes;

1 (6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy  
2 and legislation as the legislature requests;

3 (7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation  
4 might have environmental consequences and assist in preparation of reports for use by legislative committees,  
5 administrative agencies, and the public;

6 (8) consult with and assist legislators who are preparing environmental legislation to clarify any  
7 deficiencies or potential conflicts with an overall ecologic plan;

8 (9) review and evaluate operating programs in the environmental field in the several agencies to identify  
9 actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest  
10 legislation to remedy the situations; and

11 (10) perform the administrative rule review, rulemaking authority delegation, draft legislation review,  
12 program evaluation, and monitoring functions of an interim committee for the following executive branch agencies  
13 and the entities attached to the agencies for administrative purposes:

- 14 (a) department of environmental quality;
- 15 (b) department of fish, wildlife, and parks; and
- 16 (c) department of natural resources and conservation."

17  
18 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [section 1].

20  
21 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

22  
23 **NEW SECTION. Section 14. Applicability.** [This act] applies to a delegation of authority to adopt rules  
24 made after [the effective date of this act].

25 - END -