AN ACT REVISING THE MONTANA 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 CERTAIN INFORMATION AND RECOMMENDATIONS CONCERNING FEDERAL MANDATES TO BE INCLUDED IN THE STATE BUDGETING PROCESS; 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~~.

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

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to the United States constitution and fundamental notions of federalism and self-determination must

be identified, ~~and~~ countered, and resisted.

(2) The legislature further finds and declares that:

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

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

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

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

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

~~(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.~~

~~(g)~~(e) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12,

1995, that are implemented in Montana comply with the United States constitution and state policy as established by the legislature; and

~~(h)~~(f) nothing in this part may be construed to create a private cause of action."

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

"2-1-405. Requirement for budget recommendation -- reporting on federal mandates -- savings. (1) Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in ~~such~~ a way ~~as to~~ that will create additional savings or greater reductions in regulatory burdens.

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

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

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

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

"2-1-407. Report -- recommendations. (1) The governor shall examine the information received pursuant to 2-1-405 and, based ~~upon~~ on the information, shall present a report to the legislature meeting in its next regular session that includes the following:

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

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

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

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

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

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

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

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

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

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

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

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or

repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

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

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

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

(ii) the number of persons affected.

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

(2) (a) (i) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in

regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

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

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

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

(A) obtain the legislator's comments;

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

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

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

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

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

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,

or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

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

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

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

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

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

(8) (a) For purposes of contacting primary sponsors under subsection (2)(d), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. The secretary of state may also use legislator contact information provided by the legislative services division for the purposes of the register. The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator or the legislative services division. An agency proposing rules shall consult the register when providing sponsor contact.

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

primary sponsor by using less than all of these three methods of contact, the other methods need not be used."

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

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

(a) review administrative rules within its jurisdiction;

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

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

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

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

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

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

(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

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

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

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

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

~~(3)~~<u>(4)</u> The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

payments on the analysis being performed.

(7) (a) The department of public health and human services' budget request for the 2013 biennium must identify changes necessary to reduce the 2013 biennium expenditures to the level funded in the general appropriations act. The department may include changes such as reducing administrative costs, developing more cost-efficient methods to deliver services, limiting the number of medicaid services that adults may receive, changing medicaid services included in the Montana medicaid state plan, changing eligibility or level-of-care requirements for medicaid waiver services, limiting or changing services that are fully state-funded, or implementing other initiatives that reduce state funds. Achieving the necessary general fund reduction in the 2013 biennium budget request may not include shifting costs to state special revenue funds.

(b) The department of public health and human services shall prepare a work plan with goals, milestones, and measures to guide its review of alternatives to identify, evaluate, and select initiatives to reduce ongoing state spending in its 2013 biennium budget submission. The department shall submit the work plan, goals, milestones, and measures to the legislative finance committee at its first meeting after the adjournment of the 2009 legislative session for its review and comment. The department shall provide an update of its budget reduction for review and comment at each legislative finance committee meeting in a format developed with and agreed upon by the committee.

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

Section 8. Effective date. [This act] is effective July 1, 2015.

- END -

I hereby certify that the within bill,

HB 0315, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____ day

of _____, 2015.

_____

President of the Senate

Signed this _____ day

of _____, 2015.

HOUSE BILL NO. 315

INTRODUCED BY B. HARRIS, N. BALLANCE, G. BENNETT, S. BERGLEE, T. BERRY, M. BLASDEL, J. BRENDEN, R. BRODEHL, B. BROWN, A. DOANE, R. EHLI, J. FIELDER, F. GARNER, C. GLIMM, E. GREEF, S. HESS, J. HINKLE, K. HOLMLUND, D. JONES, D. KARY, D. LAMM, M. LANG, S. LASZLOFFY, S. LAVIN, F. MANDEVILLE, T. MANZELLA, W. MCKAMEY, D. MOORE, D. MORTENSEN, M. NOLAND, A. OLSZEWSKI, R. OSMUNDSON, R. PINOCCI, L. RANDALL, A. REDFIELD, K. REGIER, V. RICCI, T. RICHMOND, D. SALOMON, N. SCHWADERER, R. SHAW, C. SMITH, S. STAFFANSON, N. SWANDAL, J. TAYLOR, B. TSCHIDA, G. VANCE, K. WAGONER, K. WHITE, D. ZOLNIKOV

AN ACT REVISING THE MONTANA 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 CERTAIN INFORMATION AND RECOMMENDATIONS CONCERNING FEDERAL MANDATES TO BE INCLUDED IN THE STATE BUDGETING PROCESS; 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.