

## SENATE BILL NO. 445

INTRODUCED BY G. BARKUS

BY REQUEST OF THE HOUSE JOINT SELECT COMMITTEE ON DISTRICTING AND APPORTIONMENT

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE TRANSITION SECTION OF THE DISTRICTING AND APPORTIONMENT PLAN THAT ASSIGNS HOLDOVER SENATORS TO NEW DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the Montana Constitution and the verbatim transcripts of the 1972 Constitutional Convention do not address the assignment of holdover senators to districts following the drawing of new legislative districts pursuant to Article V, section 14, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court has consistently held that the Constitution is a limit on rather than a grant of legislative authority, beginning with *State ex rel. Evans v. Stewart*, 53 Mont. 18, 161 P. 309 (1916); and

WHEREAS, in spite of the lack of a constitutional limit on legislative authority, the Legislature has acquiesced in the assignment of holdover senators by the Districting and Apportionment Commission because of the fair and nonpartisan assignments that have traditionally occurred; and

WHEREAS, the districting plan submitted to the 58th Legislature for review and comment proposed to assign holdover senators on partisan basis for future partisan gain; and

WHEREAS, the Legislature enacted Senate Bill No. 258 as Chapter 4, Laws of 2003, to authorize the Legislature to assign holdover senators and prohibit the Districting and Apportionment Commission from assigning holdover senators prior to the Districting and Apportionment Commission's adoption of its final plan.

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

NEW SECTION. **Section 1. Repealer.** Section 3 of the districting and apportionment plan of 2003, the transition provision assigning holdover senators to new legislative districts, is repealed.

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the

meaning of 1-2-109, to the districting and apportionment plan adopted by the districting and apportionment commission on February 5, 2003.

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