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SENATE BILL NO. 490

INTRODUCED BY G. HERTZ, S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LEGISLATURE'S INVESTIGATIVE POWERS; PROVIDING FOR THE SCOPE AND APPLICATION OF THE LEGISLATURE'S INVESTIGATIVE POWERS; REVISING SUBPOENA LAWS REGARDING WITNESSES AND THE PRODUCTION OF RECORDS; PROVIDING DEFINITIONS; PROVIDING FOR A MISDEMEANOR; PROVIDING FOR THE SENATE'S SUBPOENA AUTHORITY DURING AN IMPEACHMENT PROCEEDING; AMENDING SECTIONS 5-5-101, 5-5-102, AND 5-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Scope and application of legislature investigative powers.** (1) (a)

Pursuant to Article V, section 1, of the Montana constitution, the legislative power is vested in the legislature consisting of a senate and a house of representatives.

(b) The constitutional legislative power includes the legislature's broad power to investigate any subject related to enacting law, the implementation of enacted law, and the expenditure of money appropriated by the legislature.

(c) The presumption of constitutionality of legislative actions applies to legislative investigations.

(2) The broad scope and application of the legislature's investigative powers include but are not limited to the power to investigate:

(a) any subject regarding information in connection with the proper discharge of the legislature's function to enact, amend, or repeal statutes, appropriate money, audit state and local government finances and programs, or perform any other act delegated to the legislature by the constitution;

(b) any subject in which there is a legitimate use that the legislature can make of the information being sought;

(c) the management of state institutions and public agencies, as defined in 2-6-1002;

(d) matters concerning the administration of existing laws, proposed laws, or potentially necessary

1 laws; and

2 (e) matters concerning defects in any social, political, or economic system to remedy those
3 defects.

4 (3) The application and exercise of the legislature's investigative power must protect the rights of
5 all persons and adhere to all state and federal constitutional protections related to privacy, life, liberty, and
6 property.

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8 **Section 2.** Section 5-5-101, MCA, is amended to read:

9 **"5-5-101. Subpoenas -- witnesses -- records.** (1) A subpoena requiring the attendance of any
10 witness before either house of the legislature, or a committee of either house, a committee established under
11 legislative rules, or a statutory committee or an interim committee may be issued by the president of the senate,
12 the speaker of the house, or the presiding officer of any committee before whom the attendance of the witness
13 is desired.

14 (2) A subpoena compelling attendance of a witness is sufficient if:

15 (a) it states whether the proceeding is before the house of representatives, the senate, or a
16 committee;

17 (b) it states the legislative purpose for issuing the subpoena;

18 ~~(b)(c)~~ it is addressed to the witness;

19 ~~(e)(d)~~ it requires the attendance of the witness at a time and place certain; and

20 ~~(d)(e)~~ it is signed by the president of the senate, the speaker of the house, or the presiding officer of a
21 committee.

22 (3) (a) In the discharge of its duties, either house of the legislature, a committee of either house, a
23 committee established under legislative rules, or a statutory committee or an interim committee may issue a
24 subpoena to compel the production of a record that is fixed in any medium and is retrievable from a person that
25 is in possession, custody, or control of the record.

26 (b) A subpoena compelling the production of a record is sufficient if:

27 (i) it states whether the proceeding is before the house of representatives, the senate, or a
28 committee;

- 1 (ii) it states the legislative purpose for issuing the subpoena;
- 2 (iii) it provides a description of the records being compelled for production;
- 3 (iv) it is addressed to a person;
- 4 (v) except as provided in subsection (3)(c), it requires the production of a record at a date and
- 5 place certain, but not later than 10 business days from receipt of the subpoena; and
- 6 (vi) it is signed by the president of the senate, the speaker of the house, or the presiding officer of a
- 7 committee.

8 (c) (i) A person that is served a subpoena to produce records that may include confidential
 9 information shall notify the presiding officer that signed the subpoena and submit a written notice of denial and
 10 a written explanation for the denial pursuant to 2-6-1009.

11 (ii) A person served a subpoena under subsection (3)(c)(i), may request additional time to produce
 12 the records pursuant to subsection (3)(b)(v).

13 (4) For the purposes of this section:

14 (a) "Confidential information" has the meaning provided in 2-6-1002; and

15 (b) "Person" has the meaning provided in 2-5-103."

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17 **Section 3.** Section 5-5-102, MCA, is amended to read:

18 **"5-5-102. Service of subpoenas.** The subpoena may be served by any elector of the state, and the
 19 elector's affidavit that the elector delivered a copy to the witness or the person compelled to produce records
 20 under 5-5-101(3) is evidence of service."

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22 **Section 4.** Section 5-5-103, MCA, is amended to read:

23 **"5-5-103. Contempt -- misdemeanor.** (1) If a witness neglects or refuses to obey a subpoena or,
 24 appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit
 25 the witness for contempt.

26 (2) If a person compelled to produce records under 5-5-101(3) neglects or refuses to obey a
 27 subpoena, the senate or house may, by resolution entered on the journal, commit the witness for contempt.

28 (3) A person who neglects or refuses to obey a subpoena under subsection (1) or (2) is guilty of a

1 misdemeanor punishable as provided in 46-18-212."

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3 **NEW SECTION. Section 5. Senate subpoenas.** A subpoena issued by the senate during an
4 impeachment proceeding has the same force and effect as a subpoena from a district court in a criminal action.

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6 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
7 integral part of Title 5, chapter 5, part 1, and the provisions of Title 5, chapter 5, part 1, apply to [section 1].

8 (2) [Section 5] is intended to be codified as an integral part of Title 5, chapter 5, part 4, and the
9 provisions of Title 5, chapter 5, part 4, apply to [section 5].

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11 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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