

1 SENATE BILL NO. 44

2 INTRODUCED BY D. EMRICH

3 BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CODIFYING LAWS REGARDING
6 THE SEPARATION OF POWERS DOCTRINE; DEFINING THE POWERS OF THE LEGISLATIVE BRANCH,
7 INCLUDING THE HOUSE OF REPRESENTATIVES AND THE SENATE; DEFINING THE POWERS OF THE
8 EXECUTIVE BRANCH AND EXECUTIVE BRANCH OFFICERS; DEFINING THE POWERS OF THE JUDICIAL
9 BRANCH; DEFINING THE POWERS OF THE BOARD OF REGENTS OF HIGHER EDUCATION AND THE
10 BOARD OF PUBLIC EDUCATION; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-15-1505 AND 2-15-
11 1507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 14
15 **NEW SECTION. Section 1. Separation of powers doctrine -- government powers generally --**
16 **limits.** (1) The powers of the executive branch and judicial branch are limited to those enumerated in the
17 Montana constitution and granted by law.
- 18 (2) The legislature may not enact a law that is contrary to the constitution or exercise executive
19 branch powers provided for in [section 5] or judicial branch powers provided for in [section 6].
- 20 (3) The executive branch may not exercise legislative branch powers provided for in [sections 2
21 through 4] or judicial branch powers provided for in [section 6].
- 22 (4) The judicial branch may not:
- 23 (a) exercise legislative branch powers provided for in [sections 2 through 4];
- 24 (b) amend the effective date of an act of the legislature before the law becomes effective;
- 25 (c) declare a law unenforceable as applied toward anyone other than the parties involved in a case
26 or controversy; or
- 27 (d) exercise executive branch powers provided for in [section 5].
- 28 (5) The power of the board of regents is defined as provided in [section 7].

1 (6) The power of the board of public education is limited as provided in [section 7].

2
3 NEW SECTION. Section 2. Legislative branch power. Article V of the Montana constitution vests
4 the legislature with power that cannot be exercised by other branches of government. This power is exercised
5 through a legislature consisting of a senate and a house of representatives. The legislature's power includes
6 but is not limited to the authority to:

7 (1) increase the limit on the length of a subsequent legislative session;

8 (2) enact, amend, and repeal statutes;

9 (3) appropriate money;

10 (4) enact laws to ensure the continuity of government during a period of emergency without regard
11 for other provisions of the constitution;

12 (5) adopt a code of ethics prohibiting conflict between public duty and private interest for members
13 of the legislature and all state and local officers and employees;

14 (6) overrule the governor's veto of a bill as authorized by Article VI, section 10, of the Montana
15 constitution;

16 (7) make recommendations concerning a districting and apportionment plan before it becomes
17 law;

18 (8) make joint rules of the legislature;

19 (9) interpret the joint rules of the legislature without interference from any other branch of
20 government;

21 (10) regulate certain activities of the judicial branch, including:

22 (a) disapproving rules of procedure promulgated by the supreme court in either of the two sessions
23 following promulgation;

24 (b) as authorized by Article VII, section 6, of the Montana constitution, changing the number and
25 boundaries of judicial districts and the number of judges in each district; and

26 (c) as authorized by Article VII, section 11, of the Montana constitution, creating a judicial
27 standards commission and providing for statutory exceptions to judicial confidentiality;

28 (11) refer measures to the people and regulate elections, including:

- 1 (a) referring any act of the legislature, except an appropriation of money, to the people for
2 approval;
- 3 (b) referring proposed amendments to the Montana constitution to the people for ratification;
- 4 (c) ordering a special election for initiative and referendum measures;
- 5 (d) specifying by law the requirements for residence, registration, absentee voting, and
6 administration of elections;
- 7 (e) providing, at the option of the legislature, a system of poll booth registration;
- 8 (f) ensuring the purity of elections and guarding against abuses of the electoral process; and
- 9 (g) as authorized by Article IV, section 4, of the Montana constitution, specifying additional
10 qualifications for any public office;
- 11 (12) monitor and exercise legislative oversight over other branches of government, including:
- 12 (a) establishing a legislative council and other interim committees;
- 13 (b) auditing state and local government finances and programs; and
- 14 (c) investigating any subject relevant to the proper discharge of the legislature's function;
- 15 (13) specify by law the grounds for impeachment;
- 16 (14) select by law the tribunal to hear and resolve impeachment charges;
- 17 (15) tax, borrow, and otherwise raise revenue, including but not limited to:
- 18 (a) providing for property tax exemptions;
- 19 (b) providing independent appeal procedures for taxpayer grievances;
- 20 (c) as authorized by Article VIII, section 8, of the Montana constitution, authorizing state debt;
- 21 (d) limiting debts of counties, cities, towns, and all other local government entities;
- 22 (e) ensuring strict accountability of all revenue received and money spent by the state and
23 counties, cities, towns, and all other local government entities; and
- 24 (f) providing for a unified investment program for public funds, a public retirement system, and
25 state workers compensation insurance fund assets; and
- 26 (16) enact laws governing, and to be implemented by, the board of regents and the board of public
27 education.
- 28

1 **NEW SECTION. Section 3. Legislative branch power -- house of representatives.** The house of
2 representatives has sole power to:

- 3 (1) judge the election and qualifications of its members;
- 4 (2) choose its officers from among its members;
- 5 (3) keep a journal;
- 6 (4) adopt, amend, repeal, and interpret rules governing its proceedings; and
- 7 (5) impeach public officers.

8
9 **NEW SECTION. Section 4. Legislative branch power -- senate.** The senate has sole power to:

- 10 (1) judge the election and qualifications of its members;
- 11 (2) choose its officers from among its members;
- 12 (3) keep a journal;
- 13 (4) adopt, amend, repeal, and interpret rules governing its proceedings; and
- 14 (5) confirm appointments made by the governor for the following:
 - 15 (a) vacancies in the supreme court and district courts, as authorized by Article VII, section 8, of the
 - 16 Montana constitution;
 - 17 (b) regents of higher education, as authorized by Article X, section 9(2)(b), of the Montana
 - 18 constitution;
 - 19 (c) members of the board of public education, as authorized by Article X, section 9(3)(b), of the
 - 20 Montana constitution;
 - 21 (d) commissioner of the department of labor, as authorized by Article XII, section 2(1); and
 - 22 (e) all other officers provided for in the constitution or by law whose appointment or election is not
 - 23 otherwise provided, as authorized by Article VI, section 8, of the Montana constitution.

24
25 **NEW SECTION. Section 5. Executive branch power.** Article VI of the Montana constitution vests
26 the executive branch with power that cannot be exercised by other branches of government. This power is
27 exercised through a governor, lieutenant governor, secretary of state, attorney general, superintendent of public
28 instruction, auditor, board of regents, and board of public education. The executive power includes the

1 following:

2 (1) the authority of the governor to:

3 (a) faithfully execute laws;

4 (b) as authorized by Article VI, section 6, of the Montana constitution, fill a vacancy by appointment
5 in the office of lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or
6 auditor;

7 (c) as authorized by Article VI, section 8, of the Montana constitution, appoint all officers provided
8 for in the constitution or by law whose appointment or election is not otherwise specified;

9 (d) as authorized by Article VI, section 9, of the Montana constitution, submit a budget to the
10 legislature setting forth in detail all operating funds, proposed expenditures, and estimated revenue of the state;

11 (e) convene a special session of the legislature;

12 (f) as authorized by Article VI, section 10, of the Montana constitution, veto certain bills of the
13 legislature;

14 (g) grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines
15 and forfeitures subject to procedures provided by law;

16 (h) act as commander-in-chief of the militia forces of the state;

17 (i) require information in writing, under oath when necessary, from the officers of the executive
18 branch and officers and managers of state institutions;

19 (j) appoint a committee to investigate and report on the condition of any executive office or state
20 institution;

21 (k) as authorized by Article VII, section 8, of the Montana constitution, appoint a replacement for
22 any vacancy in the office of supreme court justice or district court judge from nominees selected in the manner
23 provided by law;

24 (l) serve on the board of land commissioners;

25 (m) serve as an ex officio member of the board of regents and the board of public education, with
26 power to break a tie vote of the state board of education;

27 (n) as authorized by Article X, section 9, of the Montana constitution, appoint members of the
28 board of regents and the board of public education; and

- 1 (o) perform duties provided in the Montana constitution and by law;
- 2 (2) the authority of the lieutenant governor to:
- 3 (a) perform the duties provided by the governor;
- 4 (b) as authorized by Article VI, section 14, of the Montana constitution, assume the power of the
- 5 governor during a vacancy in that office; and
- 6 (c) perform any other duties provided by law;
- 7 (3) the authority of the secretary of state to:
- 8 (a) maintain official records of the executive branch as provided by law;
- 9 (b) maintain official records of the legislature as provided by law;
- 10 (c) as authorized by Article III, section 4, of the Montana constitution, administer the filing and
- 11 certification of citizen initiative petitions;
- 12 (d) as authorized by Article III, section 5, of the Montana constitution, administer the filing and
- 13 certification of citizen referendum petitions to approve or reject an act of the legislature;
- 14 (e) as authorized by Article III, section 7, of the Montana constitution, submit an initiative or
- 15 referendum to the qualified electors at the next regularly scheduled statewide election when a ballot measure is
- 16 declared invalid because the election was improperly conducted;
- 17 (f) as authorized by Article XIV, section 2, of the Montana constitution, administer the certification
- 18 and filing of citizen petitions calling for a convention to revise, alter, or amend the Montana constitution;
- 19 (g) as authorized by Article XIV, section 9, of the Montana constitution, provide for the filing of
- 20 citizen initiative petitions to amend the Montana constitution;
- 21 (h) as authorized by Article IV, section 8, of the Montana constitution, enforce certain term limits
- 22 through a ballot certification process;
- 23 (i) maintain plans filed by a districting and apportionment commission;
- 24 (j) as authorized by Article VI, section 10, of the Montana constitution, conduct a veto override poll
- 25 for certain acts of the legislature when it is not in session;
- 26 (k) keep the great seal of the state;
- 27 (l) serve on the board of land commissioners; and
- 28 (m) perform any other duties provided by law;

- 1 (4) the authority of the attorney general to:
- 2 (a) serve as the chief legal officer of the state;
- 3 (b) serve on the board of land commissioners;
- 4 (c) as authorized by Article VI, section 14, of the Montana constitution, inform the legislature when
- 5 the governor is unable to discharge the powers and duties of that office; and
- 6 (d) perform any other duties provided by law;
- 7 (5) the authority of the superintendent of public instruction to:
- 8 (a) serve on the board of land commissioners;
- 9 (b) serve as an ex officio member of the board of regents and the board of public education; and
- 10 (c) perform any other duties provided by law;
- 11 (6) the authority of the auditor to:
- 12 (a) serve on the board of land commissioners; and
- 13 (b) perform any other duties provided by law;
- 14 (7) the authority of the board of regents to perform duties provided by law and [section 7]; and
- 15 (8) the authority of the board of public education to perform duties provided by law and [section 7].

16

17 NEW SECTION. **Section 6. Judicial branch power.** (1) Article VII of the Montana constitution vests

18 the judicial branch with power that cannot be exercised by other branches of government. This power is

19 exercised through a supreme court, district courts, justice courts, and other courts as may be provided by state

20 statute. The judicial power includes:

- 21 (a) the authority to:
- 22 (i) as authorized by Article II, section 7, of the Montana constitution, instruct juries in suits for
- 23 defamation;
- 24 (ii) as authorized by Article II, section 16, of the Montana constitution, provide a speedy remedy for
- 25 every injury of person, property, or character unless limited by a workers' compensation law;
- 26 (iii) as authorized by Article II, section 20, of the Montana constitution, oversee the prosecution of
- 27 criminal offense laws;
- 28 (iv) as authorized by Article II, section 29, of the Montana constitution, account for funds received

1 in litigation through eminent domain;

2 (v) as authorized by Article II, section 30, of the Montana constitution, hear confessions regarding
3 treason against the state;

4 (vi) as authorized by Article IV, section 2, of the Montana constitution, determine if a person is
5 disqualified from being a qualified elector because of a current sentence for a felony or an unsound mind;

6 (vii) as authorized by Article IV, section 7, of the Montana constitution, oversee a preelection
7 challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection
8 challenge in the manner provided by law;

9 (viii) as authorized by Article VII, section 4(3), of the Montana constitution, try and determine
10 contested elections as provided by law; and

11 (ix) as authorized by Article V, section 10, of the Montana constitution, exercise jurisdiction that is
12 provided to courts by law;

13 (b) the authority of the supreme court to:

14 (i) as authorized by Article V, section 14(2), of the Montana constitution, select a fifth member of
15 the districting and apportionment commission when the four members of the commission fail to make a
16 selection;

17 (ii) exercise appellate jurisdiction and issue, hear, and determine writs appropriate to appellate
18 jurisdiction;

19 (iii) exercise original jurisdiction to issue, hear, and determine writs of habeas corpus;

20 (iv) exercise original jurisdiction over the writs as specified by statute;

21 (v) exercise supervisory control over all other state courts;

22 (vi) make rules governing appellate procedure, practice and procedure for all other state courts,
23 admission to the bar, and the conduct of licensed attorneys;

24 (vii) enact rules of procedure, subject to disapproval by the legislature in either of the two sessions
25 following promulgation;

26 (viii) substitute a district court judge in the event of disqualification or disability of the chief justice or
27 a justice;

28 (ix) as authorized by Article VII, section 11, of the Montana constitution, retire any justice or judge

1 for a disability that seriously interferes with the performance of duties; and

2 (x) as authorized by Article VII, section 11, of the Montana constitution, censure, suspend, or
3 remove any justice or judge for willful misconduct in office, willful and persistent failure to perform duties,
4 violation of canons of judicial ethics adopted by the court, or habitual intemperance;

5 (c) the authority of a district court to:

6 (i) exercise original jurisdiction in all criminal cases amounting to felony and all civil matters and
7 cases at law and in equity;

8 (ii) issue all writs appropriate to its jurisdiction;

9 (iii) exercise the power of naturalization;

10 (iv) exercise jurisdiction delegated by a state statute;

11 (v) hear appeals from inferior courts as trials anew unless otherwise provided by a state statute;

12 and

13 (vi) review decisions of administrative agencies when provided by a state statute; and

14 (d) the authority of a justice court to exercise original jurisdiction that is provided by a state statute.

15 (2) As used in this section, the following definitions apply:

16 (a) "Appellate jurisdiction" means the review of a decision of the district court or other lower court
17 as provided by a state statute.

18 (b) "Eminent domain" has the same meaning as provided in 70-30-101.

19 (c) "Felony" has the same meaning as provided in 45-2-101.

20 (d) "Original jurisdiction" means the authority of a court to hear, determine, and render judgment
21 on a case or controversy for the first time.

22 (e) "Person" has the same meaning as provided in 1-1-201.

23 (f) "Property" has the same meaning as provided in 1-1-205.

24 (g) "Supervisory control" means an extraordinary court remedy that is sometimes justified when
25 urgency or emergency factors exist making the normal appeal process inadequate, when the case involves
26 purely legal questions, and when one or more of the following circumstances exist:

27 (i) the other court is proceeding under a mistake of law and is causing a gross injustice;

28 (ii) constitutional issues of statewide importance are involved; or

(iii) the other court grants or denies a motion for substitution of a judge in a criminal case.

(h) "Treason" means levying war against the state or adhering to enemies of the state by giving them aid and comfort.

(i) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer.

(j) "Writ of habeas corpus" means a court order directed at the custodian of an individual petitioner to produce the petitioner before the court for the purpose of determining the following:

(i) whether the petitioner is unlawfully imprisoned or restrained of liberty;

(ii) the reason why the imprisonment or restraint is unlawful; and

(iii) where and by whom the petitioner is confined or restrained.

NEW SECTION. Section 7. Executive branch power of board of regents and board of public education -- definitions. (1) The board of regents and the board of public education are agencies of the executive branch of state government. As such, they are required to enforce, within their respective spheres, laws adopted by the legislature or by the people.

(2) The oversight of the Montana University System entrusted by the state constitution to the board of regents refers to the kind of oversight customarily exercised by executive branch officers over operations assigned to them and does not extend to overriding state statutes. The board of regents' power regarding the government, control, supervision, coordination, and management of the university system and other public educational institutions is assigned by law.

(3) The duties entrusted by the state constitution to the board of public education are limited to executive branch functions and do not extend to overriding state statutes. The board of public education exercises general supervision over the public school system and other public educational institutions as assigned by law.

(4) The rights of the people protected in the United States and Montana constitutions extend fully to geographical areas under the control of the board of regents and the board of public education. The boards are obligated to respect and protect those rights and to implement laws that protect or enhance them.

(5) As used in this section, the following definitions apply:

(a) "Board of public education" means the board of public education created in Article X, section

1 9(3), of the Montana constitution and 2-15-1507.

2 (b) "Board of regents" means the board of regents of higher education established by Article X,
3 section 9(2), of the Montana constitution and 2-15-1505.

4 (c) "Coordination" means the process of organizing people or groups so that they work together
5 properly and well.

6 (d) "General supervision" means general instructions are given and tasks are undertaken to
7 achieve required outcomes or objectives.

8 (e) "Government" means the authority to supervise, coordinate, manage, and control.

9 (f) "Manage" or "management" means an activity inclusive of control that is performed on a daily
10 basis.

11 (g) "Supervision" means regular monitoring of the administrative, clinical, or clerical work
12 performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the
13 authority to give direction and require change.

14

15 **Section 8.** Section 2-15-1505, MCA, is amended to read:

16 **"2-15-1505. Board of regents of higher education.** (1) The board of regents of higher education
17 created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members
18 appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and
19 commissioner of higher education are ex officio nonvoting members of the board of regents.

20 (2) The board of regents is an executive agency of government and as such is charged with
21 complying with and enforcing state law within the scope of its jurisdiction as provided in [section 7]."

22

23 **Section 9.** Section 2-15-1507, MCA, is amended to read:

24 **"2-15-1507. Board of public education.** (1) The board of public education created in Article X,
25 section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor
26 and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher
27 education are ex officio nonvoting members of the board of public education.

28 (2) The board of public education is an executive agency of government and as such is charged

1 with complying with and enforcing state law within the scope of its jurisdiction as provided in [section 7]."

2

3 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be
4 codified as a new part of Title 1, chapter 1, and the provisions of Title 1, chapter 1, apply to [sections 1 through
5 7].

6

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

8

- END -