

1 HOUSE BILL NO. 190
2 INTRODUCED BY B. MERCER, T. MOORE, M. BERTOGLIO, L. HELLEGAARD
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING FOR A
5 STRATEGIC PLANNING PROCESS FOR CERTAIN GOVERNMENT ENTITIES; REQUIRING
6 DEPARTMENTS TO PRODUCE STRATEGIC PLANS AND ANNUAL PERFORMANCE REPORTS
7 ~~DEPARTMENT ANNUAL~~ PLANS; PROVIDING FOR CERTAIN PUBLIC COMMENT PROVISIONS; LIMITING
8 ~~JUDICIAL REVIEW~~; EXEMPTING CERTAIN DEPARTMENTS FROM CERTAIN BUDGET PLANNING
9 PROCESS REQUIREMENTS; REQUIRING THAT ONLY EXISTING RESOURCES MAY BE USED TO
10 IMPLEMENT THE ACT; PROVIDING DIRECTIONS TO THE CODE COMMISSIONER; AMENDING
11 SECTIONS 2-4-102 AND 17-7-111, MCA; REPEALING SECTIONS 2-15-2221, 2-15-2222, 2-15-2223, 2-15-
12 2224, 2-15-2225, AND 2-15-2226, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

15
16 NEW SECTION. Section 1. Short title. [Sections 1 through & 76] may be cited as the "State
17 Measurement for Accountable, Responsive, and Transparent Government (SMART) Act".

18
19 NEW SECTION. Section 2. Declaration of policy and purpose. (1) It is the public policy of this
20 state to provide for a strategic planning process for state government that results in the development of ~~THAT~~
21 ~~THE EXECUTIVE BRANCH DEPARTMENTS WILL PUBLISH~~ goals, objectives, to provide for an annual planning process
22 for state government that results in the development of initiatives and performance measures for each
23 department's programs ~~PROGRAM~~ department's divisions to facilitate efficient, transparent, accountable, and
24 responsive government service, including annual performance reports to optimize the performance
25 ~~EFFECTIVENESS~~ of state government.

26 (2) — The purpose of [sections 1 through 8] is to ensure the development of strategic plans for
27 executive branch departments that include performance measures to ~~THIS WILL allow policymakers,~~

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1 ~~stakeholders, and the public to understand what a department intends to accomplish and that to create a basis~~
2 ~~to evaluate whether each department has achieved its strategic plan GOALS AND OBJECTIVES and whether the~~
3 ~~outcomes and outputs merited the use of taxpayer money.~~

4 (2) The purpose of [sections 1 through 6] is to ensure the development of executive branch annual
5 plans to provide transparency to policymakers, stakeholders, and the public with regard to departments'
6 initiatives. The annual plans will be guided and evaluated by performance measures designed to assess how
7 well each department has performed with respect to its initiatives.

8
9 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8 ~~76~~], the following
10 definitions apply:

11 (1) "Annual performance report" means a written annual review and assessment of the outcomes
12 and outputs of a department as compared to its established ~~strategic~~ DEPARTMENT annual plan and
13 performance measures.

14 (2) "Annual plan" means a written plan prepared to guide the ongoing and proposed activities of a
15 department by setting out initiatives, aspirational goals, outcomes, and outputs that the department intends to
16 accomplish, and performance measures to facilitate program evaluations.

17 ~~(2)(3)~~ "Department" means each entity listed in 2-15-104(1)(a) through (1)(p), the office of the
18 secretary of state, the office of the state auditor, and the office of public instruction.

19 ~~(3) "DEPARTMENT PLAN" MEANS A WRITTEN PLAN PREPARED BY A DEPARTMENT THAT CONTAINS THE~~
20 ~~GOALS, OBJECTIVES, OUTCOMES, AND OUTPUTS THAT A DEPARTMENT INTENDS TO ACCOMPLISH THROUGH ITS~~
21 ~~PROGRAMS, THAT IS USED TO GUIDE THE ONGOING AND PROPOSED ACTIVITIES OF A DEPARTMENT WITH PERFORMANCE~~
22 ~~MEASURES FOR TRACKING SUCCESS IN MEETING GOALS AND OBJECTIVES, THAT IS REVISED REGULARLY, AND THAT~~
23 ~~REMAINS IN EFFECT UNTIL REPLACED OR REVISED.~~

24 (4) "Division" has the meaning provided in 2-15-104.

25 ~~(3)(4)(5)~~ "Goal" "Initiative" means a specific goal, objective, or target related to a performance
26 measure that is adopted by a department.

27 ~~(4) "Mission and vision statement" means a written statement describing a department's purpose,~~

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1 what it intends to do, and whom it intends to serve.

2 ~~(5)(6)~~ "Outcomes" means a quantification of the public benefit for Montanans derived from actions by
3 a department.

4 ~~(6)(7)~~ "Outputs" means a quantification of the number of services that a department produces for
5 Montanans.

6 ~~(7)(8)~~ "Performance measure" means a ~~written monitoring tool metric or measurement~~ that is
7 designed to help guide government by assessing what a department aspires to achieve pursuant to its strategic
8 plan pursuant to its annual plan with respect to the outcomes and outputs of its programs.

9 ~~(8) — "Program" means any activity undertaken by a department pursuant to an appropriation.~~

10 ~~(9) — "Strategic plan" means a written plan prepared by a department that contains the mission and
11 vision statement, goals, and objectives that a department intends to accomplish through its programs, that is
12 used to guide the ongoing and proposed activities of a department with performance measures for tracking
13 success in meeting goals and objectives, that is revised regularly, and that remains in effect until replaced or
14 revised.~~

15
16 NEW SECTION. Section 4. Strategic DEPARTMENT Annual plan. (1) Each department shall engage
17 in the process of strategic planning and shall produce a strategic plan STATEMENT OF GOALS, OBJECTIVES, AND
18 PERFORMANCE MEASURES. an annual plan no later than September 1, 2023.

19 (2) ~~No later than September 1, 2023, each department shall adopt a strategic DEPARTMENT plan.~~
20 Each department shall publish a subsequent strategic DEPARTMENT annual plan no later than ~~July 1, 2026~~ JULY
21 1, 2025, and a revised plan no later than July 1 September 1 every ~~3~~ 2 years afterward.

22 (3) At a minimum, a department's strategic DEPARTMENT an annual plan must include the following
23 components:

24 (a) — a mission and vision statement;

25 (b)(A) a description of the functions and programs-divisions of the department, including a discussion
26 of the department's priorities;

27 (c)(B) goals-initiatives of the department that reflect the benefits and outcomes the department

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1 expects to achieve on behalf of the public or specific groups through its ~~programs~~divisions; and

2 ~~(d)(C)~~ specific and measurable performance measures for its ~~programs~~initiatives, including the
3 preferred outcomes and outputs with respect to each ~~performance measure for each department~~
4 ~~program~~initiative.

5 (4) Performance measures must:

6 (a) be ~~derived from a department's mission and vision statement, goals, objectives, and strategic~~
7 ~~DEPARTMENT plan tracked on an ongoing basis;~~

8 ~~(b) focus on a department's efforts in implementing legislative intent and the department's~~
9 ~~priorities, goals, and objectives;~~

10 ~~(c)(b)~~ ASSESS A DEPARTMENT'S PREFERRED OUTCOMES AND OUTPUTS;

11 ~~(e)(D)(C)~~ be quantitative when possible; and

12 ~~(d)(E)(d)~~ be designed to provide meaningful and useful information to policymakers and the
13 public.

14 (5) A department's strategic DEPARTMENT plan, including associated performance measures, may
15 be adopted only after consideration of public comment. ~~THE DEPARTMENT PLANS DUE SEPTEMBER 1, 2023, ARE~~
16 ~~EXEMPT FROM THIS REQUIREMENT. ALL SUBSEQUENT DEPARTMENT PLANS MAY BE ADOPTED ONLY AFTER~~
17 ~~CONSIDERATION OF PUBLIC COMMENT.~~

18 (6) Before adopting a new or subsequent strategic DEPARTMENT plan, a department shall:

19 (a) prior to the beginning of the public notice period, give written public notice of the proposed
20 strategic DEPARTMENT plan by:

21 (i) providing prominent notice of the proposed strategic DEPARTMENT plan and any associated
22 hearings on its website; and

23 (ii) publishing notice in the Montana Administrative Register of the proposed strategic DEPARTMENT
24 plan, any associated hearings, and the dates during which public comment will be accepted;

25 (b) hold at least one public hearing on the proposed strategic DEPARTMENT plan;

26 (c) accept public comment for at least 30 days; and

27 (d) consider written and oral comments made during the public comment period and post

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1 transcripts of public hearings and ~~ANY~~ written comments on the proposed strategic DEPARTMENT plan on its
2 website.

3 ~~(7)(5)~~ The strategic DEPARTMENT annual plan adopted by a department must be posted on the
4 websites of the department ~~and the office of budget and program planning.~~

5
6 NEW SECTION. Section 5. Annual performance report. (1) No later than December 1, 2024, and
7 no later than October 1 of each year afterward, each department shall produce an annual performance report
8 for the fiscal year that concluded in the same year and distribute it as provided in subsections ~~(4) and (5)(3) and~~
9 ~~(4).~~

10 (2) The annual performance report must focus on measuring outcomes and outputs WITH RESPECT
11 TO THE PERFORMANCE MEASURES ~~rather than processes undertaken.~~

12 ~~(3) — In the annual performance report, a department shall assess whether existing performance~~
13 ~~measures continue to relate logically to goals and other elements of the strategic DEPARTMENT plan and to~~
14 ~~measure preferred outcomes AND OUTPUTS for department programs.~~

15 ~~(4)(3)~~ An annual performance report of a department must be posted on the websites ~~website~~ of the
16 department ~~and the office of budget and program planning. The annual performance report must include a~~
17 ~~hyperlink to the department's strategic DEPARTMENT plan posted on the department's official website.~~

18 ~~(5)(4)~~ By December 1 of each year, in accordance with 5-11-210, the annual performance report of
19 each department must be provided to the ~~legislative finance committee~~ interim budget committee with oversight
20 responsibility for the department pursuant to 5-12-501 and the appropriate legislative policy interim committee
21 provided for in Title 5, chapter 5, part 2.

22
23 NEW SECTION. Section 6. — Periodic assessment, audit, and revision of performance measures.
24 ~~Performance measures must be revised no less frequently than every 3 years. Interim committees and interim~~
25 ~~budget subcommittees, if provided for in law, shall use performance data to review a department's strategic~~
26 ~~planning documents as the documents relate to prospective legislation and budgets. If directed by the~~
27 ~~legislative audit committee, the legislative audit division may evaluate the methods used by departments to~~

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1 ~~ensure the accuracy of data collection and reporting.~~

2
3 NEW SECTION. Section 7. — **Judicial review.** A department's consideration of input from public
4 comment submitted pursuant to [section 4] in developing or revising a strategic DEPARTMENT plan is not subject
5 to judicial review.

6
7 NEW SECTION. Section 6. **Fiscal impact.** A department may use only existing resources to
8 implement the provisions of [sections 1 through 7 ~~65~~].

9
10 **Section 7.** Section 2-4-102, MCA, is amended to read:

11 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

12 (1) "Administrative rule review committee" or "committee" means the appropriate committee
13 assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

14 (2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the
15 provisions of this chapter do not apply to the following:

16 (i) the state board of pardons and parole, which is exempt from the contested case and judicial
17 review of contested cases provisions contained in this chapter. However, the board is subject to the remainder
18 of the provisions of this chapter.

19 (ii) the supervision and administration of a penal institution with regard to the institutional
20 supervision, custody, control, care, or treatment of youth or prisoners;

21 (iii) the board of regents and the Montana university system;

22 (iv) the financing, construction, and maintenance of public works;

23 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
24 252 and 69-3-837.

25 (b) The term does not include a school district, a unit of local government, or any other political
26 subdivision of the state.

27 (3) "ARM" means the Administrative Rules of Montana.

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1 (4) "Contested case" means a proceeding before an agency in which a determination of legal
2 rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
3 includes but is not restricted to ratemaking, price fixing, and licensing.

4 (5) (a) "Interested person" means a person who has expressed to the agency an interest
5 concerning agency actions under this chapter and has requested to be placed on the agency's list of interested
6 persons as to matters of which the person desires to be given notice.

7 (b) The term does not extend to contested cases.

8 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration,
9 charter, or other form of permission required by law but does not include a license required solely for revenue
10 purposes.

11 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
12 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

13 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of
14 right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any
15 person as a party for limited purposes.

16 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
17 agency, or public organization of any character.

18 (10) "Register" means the Montana Administrative Register.

19 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
20 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
21 requirements of an agency. The term includes the amendment or repeal of a prior rule.

22 (b) The term does not include:

23 (i) statements concerning only the internal management of an agency or state government and
24 not affecting private rights or procedures available to the public, including rules implementing the state
25 personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and
26 human resource system;

27 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

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1 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of
2 the rules is indicated to the public by means of signs or signals;

3 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
4 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating
5 to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of
6 the rules is indicated to the public by means of signs or signals;

7 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
8 accordance with 2-4-306 and must be published in the ARM; or

9 (vi) game parameters approved by the state lottery commission relating to a specific lottery game.

10 This subsection (11)(b)(vi) does not exempt generally applicable policies governing the state lottery that are
11 otherwise subject to the Montana Administrative Procedure Act; or

12 (vii) ~~strategic planning annual plan~~ documents governed by [sections 1 through ~~8-7-6~~] and published
13 as provided in [sections 1 through ~~8-7-6~~].

14 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding
15 matters that the agency knows to be of widespread citizen interest. These matters include issues involving a
16 substantial fiscal impact to or controversy involving a particular class or group of individuals.

17 (b) The term does not extend to contested cases.

18 (13) "Small business" means a business entity, including its affiliates, that is independently owned
19 and operated and that employs fewer than 50 full-time employees.

20 (14) "Substantive rules" are either:

21 (a) legislative rules, which if adopted in accordance with this chapter and under expressly
22 delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted
23 are invalid; or

24 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
25 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

26 (15) "Supplemental notice" means a notice that amends the proposed rules or changes the timeline
27 for public participation."

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1

2 **Section 8.** Section 17-7-111, MCA, is amended to read:

3 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**

4 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
5 need information that is consistent and accurate. Necessary information includes detailed disbursements by
6 fund type for each agency and program for the appropriate time period, recommendations for creating a
7 balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

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

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

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

15 (2) In the preparation of a state budget, the budget director shall, not later than the date specified
16 in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of
17 budget estimates by the budget director. These forms must be prescribed by the budget director to procure the
18 information required by subsection (3). The forms must be submitted to the budget director by the date provided
19 in 17-7-112(2), or the agency's budget is subject to preparation based upon estimates as provided in 17-7-
20 112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or
21 the instructions given for completing the forms.

22 (3) The agency budget request must set forth a balanced financial plan for the agency completing
23 the forms for each fiscal year of the ensuing biennium. The plan must consist of:

24 (a) a consolidated agency budget summary of funds subject to appropriation, as provided in 17-8-
25 101, for the current base budget expenditures, including statutory appropriations, and for each present law
26 adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel
27 positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total

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1 anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing
2 biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in
3 progress;

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

6 (c) a statement of the agency mission and a statement of goals and objectives for each program of
7 the agency. The goals and objectives must include, in a concise form, sufficient specific information and
8 quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and
9 its programs and to allow a determination, at some future date, on whether the agency has succeeded in
10 attaining its goals and objectives. An agency that has complied with the requirements provided in [sections 1
11 through § 7 6] is exempt from the provision of this subsection (3)(c).

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

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

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

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

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

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- 1 (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- 2 (g) a reference for each new information technology proposal stating whether the new proposal is
- 3 included in the approved agency information technology plan as required in 2-17-523;
- 4 (h) energy cost saving information as required by 90-4-616; and
- 5 (i) other information the budget director feels is necessary for the preparation of a budget.
- 6 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
- 7 17-7-112:
- 8 (a) detailed recommendations for capital developments for:
- 9 (i) local infrastructure projects;
- 10 (ii) funding for energy development-impacted areas; and
- 11 (iii) the state long-range building program. Each recommendation for the capital developments
- 12 long-range building program must be presented by institution, agency, or branch, by funding source, with a
- 13 description of each proposed project.
- 14 (b) a statewide project budget summary as provided in 2-17-526;
- 15 (c) the proposed pay plan schedule for all executive branch employees at the program level by
- 16 fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule
- 17 under this subsection is not an unfair labor practice under 39-31-401.
- 18 (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2,
- 19 part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and
- 20 development grants program under Title 90, chapter 2, part 11, and the Montana coal endowment program
- 21 under Title 90, chapter 6, part 7.
- 22 (5) The board of regents shall submit, with its budget request for each university unit in accordance
- 23 with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this
- 24 subsection (5). The report must include the following information for each year of the biennium, contrasted with
- 25 the same information for the last-completed fiscal year and the fiscal year in progress:
- 26 (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;
- 27 (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each

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1 outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal
2 funding requirements for each bond indenture; and

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

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

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

15 (7) The following provisions apply to the development of the budget request for the department of
16 public health and human services:

17 (a) Adjustments to the present law base must be separated by each category described in 17-7-
18 102(10) in order for the legislature to determine the changes that are attributable to legally mandated workload,
19 caseload, or enrollment increases or decreases, constitutional or statutory schedules or formulas, inflationary or
20 deflationary adjustments, and elimination of nonrecurring appropriations.

21 (b) Inflation adjustments to the present law base for the institutions or services described in
22 subsection (7)(c) must be based on a reliable national index for the particular service or a similar service or the
23 consumer price index for urban wage earners and workers. An inflation adjustment that is greater than the
24 applicable national index or consumer price index must be presented as a new proposal.

25 (c) Subsection (7)(b) applies to inflation adjustments for:

26 (i) the department-operated institutions described in 53-1-602; and

27 (ii) services provided by private sector businesses and other entities that provide direct services to

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1 beneficiaries in medicaid programs that are administered by the department divisions responsible for
2 overseeing services for the elderly and for persons with mental illness, physical disabilities, or developmental
3 disabilities."

4

5 NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are
6 repealed:

7 2-15-2221. Definitions.

8 2-15-2222. Policy -- performance measures.

9 2-15-2223. Criteria for measurement system.

10 2-15-2224. System requirements -- input from legislative audit division.

11 2-15-2225. Legislative use of performance measures.

12 2-15-2226. Department and agency use of performance measures.

13

14 NEW SECTION. Section 10. Directions to code commissioner. If [this act] is passed and
15 approved, then the code commissioner is directed to strike the reference in 5-11-222(3)(c)(i) to performance
16 data required by 2-15-2225.

17

18 NEW SECTION. Section 11. Codification instruction. [Sections 1 through & 76] are intended to be
19 codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through & 76].

20

21 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

22

- END -