

Mundok
Di. Dickerson
Storall
John Allen + Webster

Fisher *Bergman* *Mills* *Sitter* *Wagner* *Denny* *Coyne* *Emerson*
SENATE BILL NO. Clark 167

INTRODUCED BY *Benedict* *Lustig* *Burnett* *John Beck* *ORR*

Bob Brown *MERCER* *HARRP* *GRUOE* *Swygard* *Foster* *Mr. Beck*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Federal Mandates Act".

NEW SECTION. Section 2. Legislative declaration. (1) (a) In enacting [sections through 5], 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 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 Montana policy and exceed the lawful authority of the federal government or are not required by 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 fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these

1 mandates by the state wastes the financial resources of local governments, the citizens of Montana, and
2 the state and does not properly respect the rights of local governments, citizens, and the state;

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

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

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

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

23 (f) the provisions of [sections 1 through 5] will better balance the exercise of the powers of the
24 federal government and the powers reserved to the states. In addition, the application of [sections 1
25 through 5] ultimately will bring about greater protection for the state and the nation because it will direct
26 the state to implement federal statutes at the least possible cost and will make more money available for
27 other needs.

28 (g) the purpose of [sections 1 through 5] is to ensure that federal mandates implemented in
29 Montana comply with state policy as established by the legislature.

30

1 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], unless the
2 context otherwise requires, the following definitions apply:

3 (1) "Federal statute" means a federal statute that is in accord with the United States constitution
4 and that imposes mandates on state or local governments. The term includes but is not limited to the
5 following:

6 (a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;

7 (b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;

8 (c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;

9 (d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;

10 (e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as
11 amended;

12 (f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,
13 42 U.S.C. 9601, et seq., as amended;

14 (g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as
15 amended;

16 (h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;

17 (i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as
18 amended;

19 (j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;

20 (k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;

21 (l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;

22 (m) the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001,
23 et seq., as amended;

24 (n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751,
25 et seq., as amended;

26 (o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;

27 (p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as
28 amended;

29 (q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;

30 (r) federal highway safety programs;

1 (s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as
2 amended;

3 (t) the federal Educate America Act, Public Law 103-227.

4 (2) "Legislative council" means the statutory committee established in 5-11-101.

5 (3) "Legislative finance committee" means the statutory committee established in 5-12-201.
6

7 **NEW SECTION. Section 4. State programs to implement federal statutes.** (1) A
8 state official or employee charged with the duty of implementing a federal statute shall implement the law
9 as required by the federal statute in good faith and with a critical view toward the provisions of any federal
10 regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or
11 policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective
12 manner.

13 (2) An executive branch agency of state government that is authorized to develop a state
14 program to respond to any mandates contained in a federal statute shall develop the state program and
15 promulgate any necessary rules, using the following criteria:

16 (a) State programs should be developed by the state agency to meet the requirements of federal
17 statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

18 (b) State programs should be developed with due consideration of the financial restraints of local
19 governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII,
20 section 9, of the Montana constitution.

21 (c) A state program that implements the goals of the federal statute should provide for the most
22 efficient method possible, with careful consideration given to the cost of the program and the impact of
23 the program on local governments and Montana citizens and on the long-range public health, safety, and
24 welfare of citizens of the state.
25

26 **NEW SECTION. Section 5. Legislative finance committee -- reports to**
27 **legislative council -- savings.** (1) The legislative finance committee shall report to the legislative
28 council regarding the proposed implementation of this section.

29 (2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for
30 the program may not be enacted unless:

- 1 (i) the state program is necessary to protect the public health, safety, and welfare;
- 2 (ii) the state program is necessary to implement the federal statute;
- 3 (iii) the operation of the state program benefits the state by providing a cost-effective
4 implementation of the federal statute by the state, by local government, and by business; or
- 5 (iv) the state program benefits the state, local government, and business by providing a
6 cost-effective means to meet a higher public health, safety, and welfare standard established under state
7 law.
- 8 (b) Each state agency that makes a budget request for an appropriation for a state program
9 authorized or mandated by federal statute shall include in its budget request citations to the federal
10 constitutional provisions and the state constitutional or statutory provisions that authorize the state
11 program. The legislative finance committee shall review the budget request and determine whether
12 additional state statutory authority is required in order to implement the state program and shall make
13 recommendations to the legislature and the legislative council.
- 14 (c) The legislature, after receiving a recommendation from the legislative finance committee and
15 the legislative council, shall determine whether a state program is necessary and whether federal
16 constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise
17 a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or
18 policies. Enactment of a state appropriation for a state program constitutes the legislature's determination
19 that the state program is necessary and that federal constitutional authority and state constitutional or
20 statutory authority exist. State appropriations may not be based solely on requirements found in
21 regulations, guidelines, or policies of a federal agency.
- 22 (d) Prior to recommending to the legislature a budget for a state agency that is charged with
23 implementing federal mandates, the office of budget and program planning and the legislative finance
24 committee shall require that the state agency provide information regarding any monetary savings for the
25 state and any reduction in regulatory burdens on local governments and on the public that could be or have
26 been achieved through the development of state policies that meet the intent of the federal statute but do
27 not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also
28 provide advice to the office of budget and program planning and the legislative finance committee regarding
29 any changes in state statutes that are necessary to provide the state agency the authority to implement
30 state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The

1 office of budget and program planning shall review and compile the information received from state
2 agencies pursuant to this section and shall include recommendations in its annual budget request to the
3 legislative finance committee based upon the information.

4 (3) For purposes of this section, "state program" does not include any portion of a program that
5 is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a
6 trusteeship or custodial capacity and that is not subject to appropriation by the legislature.

7
8 **NEW SECTION. Section 6. Requests for information regarding federal mandates.**

9 (1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one
10 or more requests for information regarding federal mandates on or before August 31, 1995. The requests
11 for information must be directed to persons involved with or affected by federal mandates, including but
12 not limited to the following:

13 (a) public and private institutions of higher education both within and outside Montana and
14 individuals in the institutions who have developed a high degree of expertise in the subjects of federalism
15 and federal mandates;

16 (b) attorneys in private practice who have dealt with federal mandate litigation or research; and

17 (c) organizations and foundations that have an interest in the issues of federalism and the
18 imposition of federal mandates on local and state governments.

19 (2) The issues addressed in the requests for information issued pursuant to this section must
20 include the following:

21 (a) identification of federal mandates expressing broad federal policies that would best be
22 implemented on a state-by-state basis or that could be resisted because of the unique circumstances that
23 are present in each state and because of the unnecessary burdens that are created by federal regulations
24 and policies;

25 (b) legal theories that support the right of each state to implement or oppose federal mandates
26 pursuant to the state's own policies;

27 (c) practical methods, including the enactment of any state legislation, by which the state may fully
28 exercise its authority in the implementation of federal mandates;

29 (d) recommendations regarding federal legislation that would ensure that the states have the
30 necessary authority to implement federal directives in a manner that is consistent with state policy and that

1 is suited to the needs of each state; and

2 (e) possible funding sources for federal mandate efforts and opportunities for the state of Montana
3 to match other funding sources or to cooperate with other entities in working toward federal mandate
4 solutions.

5 (3) The requests for information prepared pursuant to this section must require that the initial
6 responses be received by the staff of the legislative council and the office of legislative fiscal analyst by
7 October 15, 1995. The staff of the legislative council and the office of legislative fiscal analyst may
8 prepare additional requests for information to follow up and obtain further details regarding the initial
9 responses that were received.

10

11 **NEW SECTION. Section 7. Report -- recommendations.** (1) The staff of the legislative
12 council and the office of legislative fiscal analyst shall examine the information received through the
13 requests for information prepared pursuant to [section 6] and, based upon the information, shall jointly
14 present a report to the governor, the legislative council, and the legislative finance committee on or before
15 December 1, 1995, that includes the following:

16 (a) recommendations regarding:

17 (i) contracts that the committees may enter into with specified persons or entities to conduct
18 research, to analyze certain subjects, or to provide other services regarding federal mandates; or

19 (ii) a request for proposals process to obtain bids for contracts to provide services regarding federal
20 mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the
21 results of any research or analysis performed under the contracts be received by the committees on or
22 before July 1, 1996; and

23 (b) estimates of the cost of the federal mandate efforts recommended by the staff of the legislative
24 council and the office of legislative fiscal analyst under the provisions of this section and recommendations
25 regarding any possible public and private sources of money to fund the efforts, including any appropriations
26 by the legislature that may be required.

27 (2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does
28 not serve Montana public policy, or does not conform to Montana customs and culture, the governor may
29 issue an executive order declaring the intention of Montana to not implement the mandate.

30

1 **NEW SECTION.** **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that
2 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 **NEW SECTION.** **Section 9. Effective date.** [This act] is effective on passage and approval.

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0167, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

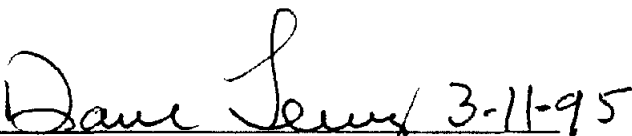
An act providing for the review of federal mandates to state and local governments; requiring agencies to implement federal mandates in the most cost-effective manner; providing for legislative review and oversight; requiring a study and report on federal mandates; and providing an immediate effective date.


ASSUMPTIONS:

1. As implied in Section 8, requests from the legislature to provide assistance regarding the implementation of federal statute and regulations will be made to the Legislative Council and/or the Legislative Fiscal Analyst. Any activity undertaken by the legislative staff is discretionary. Consequently, it may be assumed that the activity would either be (a) absorbed within available resources or (b) addressed specifically in other legislation containing a separate appropriation.
2. Additional work will be required of all state agencies participating in federal programs, specifically to comply with Section 5 by providing (a) information regarding monetary savings and reductions in regulatory burdens that have been or could be achieved; and (b) advice to the Governor regarding changes in state statutes that could create additional savings or greater reductions in regulatory burdens.
3. At this time, some agencies are unable to accurately predict the extent of the additional work and other agencies are suggesting the workload can be organized and managed within the Executive Budget present law base.
4. The Office of Budget and Program Planning will provide written guidance to state agencies for implementation of Section 5 (assumption #2) as part of the 1999 biennium Executive Planning Process using its present law base appropriation.
5. The Governor's report to the legislature in its next regular session will be incorporated in the 1999 biennium Executive Budget and will include an estimate on the cost of obtaining the information required under Section 5 (assumption #2). However, the 1999 biennium Executive Budget will not include an estimate on the cost of federal mandates to the State of Montana [clarification of legislative intent regarding page 8, lines 12 through 13 of the proposed bill].
6. Based on the assumptions stated above, there will be no increased costs to state agencies that are large enough or clearly enough defined to support an amendment to the general appropriations act during the current legislative session for an increased appropriation.

FISCAL IMPACT:

None identified.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0167, third reading

SB 167

1 SENATE BILL NO. 167

2 INTRODUCED BY BENEDICT, CURTISS, BURNETT, BAER, BECK, ORR, BROWN, MERCER, HARP,
3 GRINDE, SWYSGOOD, FOSTER, PECK, GAGE, MURDOCK, FISHER, BERGMAN, MILLS, SLITER,
4 WAGNER, DENNY, CLARK, EMERSON, MOHL, MESAROS, GREEN, SOFT, FORRESTER, JENKINS,
5 JACOBSON, L. NELSON, STANG, TVEIT, CRISMORE, SIMPKINS, AHNER, MILLER, MARSHALL,
6 HOLDEN, GROSFIELD, DEVLIN, ESTRADA, HARDING, LYNCH, CRIPPEN, JABS, SPRAGUE,
7 HARGROVE, KEATING, PAVLOVICH, HAYNE, MASOLO, BOHLINGER, ROSE, HERRON, HERTEL,
8 TOEWS, L. SMITH, TAYLOR, ARNOTT, MOLNAR, BARNETT, DEBRUYCKER, SOMERVILLE, M.
9 HANSON, OHS, WISEMAN, KNOX, ANDERSON, DEVANEY, STOVALL, FORBES, T. NELSON, LARSON

10
11 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO
12 STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN
13 THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT;
14 REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE
15 EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Short title.** [Sections 1 through § 8] may be cited as the "Federal
20 Mandates Act".

21
22 NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through § 8],
23 the legislature employs its legislative authority to establish that the people of the state of Montana, acting
24 through their elected officials in state government, have the responsibility and authority to establish policy
25 in and for Montana pertaining to federal programs mandated in federal statutes.

26 (b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political
27 authority to implement in and for Montana the policy mandated by federal statutes and to vigorously
28 challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies
29 when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful
30 authority of the federal government or are not required by federal law.

1 (c) In this regard, the Montana legislature finds and declares that:

2 (i) the power to implement federal policies in and for Montana is central to the ability of the people
3 of Montana to govern themselves under a federal system of government; and

4 (ii) any implementation of federal policies in and for Montana by federal executive branch agencies
5 that is contrary to fundamental notions of federalism and self-determination must be identified and
6 countered.

7 (2) The legislature further finds and declares that:

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

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

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

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

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

1 (f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the
 2 federal government and the powers reserved to the states. In addition, the application of [sections 1
 3 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct
 4 the state to implement federal statutes at the least possible cost and will make more money available for
 5 other needs.

6 (g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates EXISTING ON OR
 7 ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with
 8 state policy as established by the legislature;

9 (H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE
 10 OF ACTION.

11
 12 NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~5~~ 8], unless the context
 13 otherwise requires, the following definitions apply:

14 (1) "Federal statute" means a federal statute that is in accord with the United States constitution
 15 and that imposes mandates on state or local governments. ~~The term includes but is not limited to the~~
 16 ~~following:~~

17 ~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

18 ~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

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20 ~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

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 22 ~~amended;~~

23 ~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,~~
 24 ~~42 U.S.C. 9601, et seq., as amended;~~

25 ~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as~~
 26 ~~amended;~~

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7 ~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~

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15 (2) "Legislative council" means the statutory committee established in 5-11-101.

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22 are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

23 (2) An executive branch agency of state government that is authorized to develop a state
24 program to respond to any mandates contained in a federal statute shall develop the state program and
25 promulgate any necessary rules, using the following criteria:

26 (a) State programs should be developed by the state agency to meet the requirements of federal
27 statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

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29 governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII,
30 section 9, of the Montana constitution.

1 (c) A state program that implements the goals of the federal statute should provide for the most
2 efficient method possible, with careful consideration given to the cost of the program and the impact of
3 the program on local governments and Montana citizens and on the long-range public health, safety, and
4 welfare of citizens of the state.

5
6 NEW SECTION. Section 5. ~~Legislative finance committee reports to legislative council~~
7 **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES -- savings.**

8 ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed~~
9 ~~implementation of this section.~~

10 ~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for~~
11 ~~the program may not be enacted unless:~~

12 ~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

13 ~~(ii) the state program is necessary to implement the federal statute;~~

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 5 ~~committee~~ GOVERNOR shall require that the state agency provide information regarding any monetary
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 10 ~~planning and the legislative finance committee~~ GOVERNOR regarding any changes in state statutes that are
 11 necessary to provide the state agency the authority to implement state policies in such a way as to create
 12 additional savings or greater reductions in regulatory burdens. The ~~office of budget and program planning~~
 13 GOVERNOR shall review and compile the information received from state agencies pursuant to this section
 14 and shall include recommendations in ~~its annual budget request to the legislative finance committee~~ THE
 15 GOVERNOR'S BUDGET based upon the information.

16 ~~(3)~~ For purposes of this section, "state program" does not include any portion of a program that
 17 is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a
 18 trusteeship or custodial capacity and that is not subject to appropriation by the legislature.

19

20 NEW SECTION. Section 6. Requests for information INFORMATION regarding federal mandates.

21 ~~(1)~~ The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one
 22 or more requests for information regarding federal mandates on or before August 31, 1995. The requests
 23 for information must be directed to persons involved with or affected by federal mandates, including but
 24 not limited to the following:

25 ~~(a)~~ public and private institutions of higher education both within and outside Montana and
 26 individuals in the institutions who have developed a high degree of expertise in the subjects of federalism
 27 and federal mandates;

28 ~~(b)~~ attorneys in private practice who have dealt with federal mandate litigation or research; and

29 ~~(c)~~ organizations and foundations that have an interest in the issues of federalism and the
 30 imposition of federal mandates on local and state governments.

1 ~~(2) The issues addressed in the requests for information issued pursuant to this section must~~
2 include the following:

3 ~~(a) identification of federal mandates expressing broad federal policies that would best be~~
4 ~~implemented on a state by state basis or that could be resisted because of the unique circumstances that~~
5 ~~are present in each state and because of the unnecessary burdens that are created by federal regulations~~
6 ~~and policies;~~

7 ~~(b) legal theories that support the right of each state to implement or oppose federal mandates~~
8 ~~pursuant to the state's own policies;~~

9 ~~(c) practical methods, including the enactment of any state legislation, by which the state may fully~~
10 ~~exercise its authority in the implementation of federal mandates;~~

11 ~~(d) recommendations regarding federal legislation that would ensure that the states have the~~
12 ~~necessary authority to implement federal directives in a manner that is consistent with state policy and that~~
13 ~~is suited to the needs of each state; and~~

14 ~~(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana~~
15 ~~to match other funding sources or to cooperate with other entities in working toward federal mandate~~
16 ~~solutions.~~

17 ~~(3)(1) The requests for information prepared pursuant to this section [SECTION 5] must require that~~
18 ~~the initial responses be received by the staff of the legislative council and the office of legislative fiscal~~
19 ~~analyst by GOVERNOR October 15, 1995 PRIOR TO THE GOVERNOR'S PREPARATION OF THE STATE~~
20 ~~BUDGET FOR THE ENSUING BIENNIUM. The staff of the legislative council and the office of legislative~~
21 ~~fiscal analyst GOVERNOR may prepare additional requests for information to follow up and obtain further~~
22 ~~details regarding the initial responses that were received.~~

23 ~~(2) IN CONSIDERING THE LEGALITY OR COST-EFFECTIVENESS OF A FEDERAL MANDATE,~~
24 ~~FEDERAL STATUTE, OR STATE PROGRAM, THE GOVERNOR MAY REQUEST ASSISTANCE FROM THE~~
25 ~~LEGISLATIVE COUNCIL OR ITS STAFF, BUT ASSISTANCE IS AT THE DISCRETION OF THE LEGISLATIVE~~
26 ~~COUNCIL.~~

27
28 ~~NEW SECTION. Section 7. Report -- recommendations. (1) The staff of the legislative council and~~
29 ~~the office of legislative fiscal analyst GOVERNOR shall examine the information received through the~~
30 ~~requests for information prepared pursuant to [section 6 5] and, based upon the information, shall jointly~~

1 present a report to the governor, ~~the legislative council, and the legislative finance committee on or before~~
 2 ~~December 1, 1995,~~ AND THE LEGISLATURE MEETING IN ITS NEXT REGULAR SESSION that includes the
 3 following:

4 (a) recommendations regarding:

5 ~~(i)~~ (i) contracts that the ~~committees~~ STATE may enter into with specified persons or entities to
 6 conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; ~~or~~

7 AND

8 ~~(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal~~
 9 ~~mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the~~
 10 ~~results of any research or analysis performed under the contracts be received by the committees on or~~
 11 ~~before July 1, 1996; and~~

12 (b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative~~
 13 ~~council and the office of legislative fiscal analyst~~ SUBMITTED TO THE GOVERNOR under the provisions of
 14 this section ~~and recommendations regarding any possible public and private sources of money to fund the~~
 15 ~~efforts, including any appropriations by the legislature that may be required.~~

16 (2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does
 17 not serve Montana public policy, or does not conform to Montana customs and culture, the governor may
 18 issue an executive order declaring the intention of Montana to not implement the mandate AND MAY
 19 DIRECT THE ATTORNEY GENERAL TO VIGOROUSLY REPRESENT THE STATE OF MONTANA IN ANY
 20 ACTION THAT RESULTS FROM OR THAT IS NECESSARY TO EFFECT THE EXECUTIVE ORDER.

21
 22 NEW SECTION. SECTION 8. LEGISLATIVE REVIEW AND OVERSIGHT. (1) IN EXERCISING ITS
 23 AUTHORITY AS AN EQUAL BRANCH OF STATE GOVERNMENT, THE LEGISLATURE MAY CONDUCT ANY
 24 LEGAL REVIEW OR FISCAL ANALYSIS THAT IT CONSIDERS NECESSARY TO EFFECT THE PURPOSE AND
 25 INTENT OF [SECTIONS 1 THROUGH 8]. THE GOVERNOR, THE DIRECTOR OR CHIEF EXECUTIVE OFFICER
 26 OF ANY AGENCY WITHIN THE EXECUTIVE BRANCH, OR ANY OFFICER LISTED IN ARTICLE VI, SECTION
 27 1, OF THE MONTANA CONSTITUTION SHALL, UPON REQUEST BY THE LEGISLATURE, IMMEDIATELY
 28 PROVIDE ANY INFORMATION PREPARED, COMPILED, DEVELOPED, DETAILED, DESCRIBED,
 29 REFERENCED, ANALYZED, REPORTED, OR IN ANY OTHER MANNER CONSIDERED IN CONJUNCTION
 30 WITH [SECTIONS 1 THROUGH 8].

SENATE BILL NO. 167

INTRODUCED BY BENEDICT, CURTISS, BURNETT, BAER, BECK, ORR, BROWN, MERCER, HARP,
GRINDE, SWYSGOOD, FOSTER, PECK, GAGE, MURDOCK, FISHER, BERGMAN, MILLS, SLITER,
WAGNER, DENNY, CLARK, EMERSON, MOHL, MESAROS, GREEN, SOFT, FORRESTER, JENKINS,
JACOBSON, L. NELSON, STANG, TVEIT, CRISMORE, SIMPKINS, AHNER, MILLER, MARSHALL,
HOLDEN, GROSFIELD, DEVLIN, ESTRADA, HARDING, LYNCH, CRIPPEN, JABS, SPRAGUE,
HARGROVE, KEATING, PAVLOVICH, HAYNE, MASOLO, BOHLINGER, ROSE, HERRON, HERTEL,
TOEWS, L. SMITH, TAYLOR, ARNOTT, MOLNAR, BARNETT, DEBRUYCKER, SOMERVILLE, LARSON,
FORBES, M. HANSON, OHS, WISEMAN, KNOX, ANDERSON, DEVANEY, STOVALL, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO
STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN
THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT;
REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through § 8] may be cited as the "Federal
Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through § 8],
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 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 Montana policy and exceed the lawful
authority of the federal government or are not required by federal law.

1 (c) In this regard, the Montana legislature finds and declares that:

2 (i) the power to implement federal policies in and for Montana is central to the ability of the people
3 of Montana to govern themselves under a federal system of government; and

4 (ii) any implementation of federal policies in and for Montana by federal executive branch agencies
5 that is contrary to fundamental notions of federalism and self-determination must be identified and
6 countered.

7 (2) The legislature further finds and declares that:

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

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

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

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

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

1 (f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the
 2 federal government and the powers reserved to the states. In addition, the application of [sections 1
 3 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct
 4 the state to implement federal statutes at the least possible cost and will make more money available for
 5 other needs.

6 (g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates EXISTING ON OR
 7 ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with
 8 state policy as established by the legislature;

9 (H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE
 10 OF ACTION.

11
 12 NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~5~~ 8], unless the context
 13 otherwise requires, the following definitions apply:

14 (1) "Federal statute" means a federal statute that is in accord with the United States constitution
 15 and that imposes mandates on state or local governments. ~~The term includes but is not limited to the~~
 16 ~~following:~~

17 ~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

18 ~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

19 ~~(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;~~

20 ~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

21 ~~(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as~~
 22 ~~amended;~~

23 ~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,~~
 24 ~~42 U.S.C. 9601, et seq., as amended;~~

25 ~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as~~
 26 ~~amended;~~

27 ~~(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;~~

28 ~~(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as~~
 29 ~~amended;~~

30 ~~(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;~~

- 1 ~~(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;~~
 2 ~~(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;~~
 3 ~~(m) the federal Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001-~~
 4 ~~et seq., as amended;~~
 5 ~~(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751-~~
 6 ~~et seq., as amended;~~
 7 ~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~
 8 ~~(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as~~
 9 ~~amended;~~
 10 ~~(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;~~
 11 ~~(r) federal highway safety programs;~~
 12 ~~(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as~~
 13 ~~amended;~~
 14 ~~(t) the federal Educate America Act, Public Law 103-227.~~
 15 (2) "Legislative council" means the statutory committee established in 5-11-101.
 16 ~~(3) "Legislative finance committee" means the statutory committee established in 5-12-201.~~

17
 18 **NEW SECTION. Section 4. State programs to implement federal statutes.** (1) A state official or
 19 employee charged with the duty of implementing a federal statute shall implement the law as required by
 20 the federal statute in good faith and with a critical view toward the provisions of any federal regulation,
 21 guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that
 22 are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

23 (2) An executive branch agency of state government that is authorized to develop a state
 24 program to respond to any mandates contained in a federal statute shall develop the state program and
 25 promulgate any necessary rules, using the following criteria:

26 (a) State programs should be developed by the state agency to meet the requirements of federal
 27 statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

28 (b) State programs should be developed with due consideration of the financial restraints of local
 29 governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII,
 30 section 9, of the Montana constitution.

1 (c) A state program that implements the goals of the federal statute should provide for the most
 2 efficient method possible, with careful consideration given to the cost of the program and the impact of
 3 the program on local governments and Montana citizens and on the long-range public health, safety, and
 4 welfare of citizens of the state.

5
 6 NEW SECTION. Section 5. ~~Legislative finance committee reports to legislative council~~
 7 **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES -- savings.**

8 ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed~~
 9 ~~implementation of this section.~~

10 ~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for~~
 11 ~~the program may not be enacted unless:~~

12 ~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

13 ~~(ii) the state program is necessary to implement the federal statute;~~

14 ~~(iii) the operation of the state program benefits the state by providing a cost effective~~
 15 ~~implementation of the federal statute by the state, by local government, and by business; or~~

16 ~~(iv) the state program benefits the state, local government, and business by providing a~~
 17 ~~cost effective means to meet a higher public health, safety, and welfare standard established under state~~
 18 ~~law.~~

19 ~~(b) Each state agency that makes a budget request for an appropriation for a state program~~
 20 ~~authorized or mandated by federal statute shall include in its budget request citations to the federal~~
 21 ~~constitutional provisions and the state constitutional or statutory provisions that authorize the state~~
 22 ~~program. The legislative finance committee shall review the budget request and determine whether~~
 23 ~~additional state statutory authority is required in order to implement the state program and shall make~~
 24 ~~recommendations to the legislature and the legislative council.~~

25 ~~(c) The legislature, after receiving a recommendation from the legislative finance committee and~~
 26 ~~the legislative council, shall determine whether a state program is necessary and whether federal~~
 27 ~~constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise~~
 28 ~~a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or~~
 29 ~~policies. Enactment of a state appropriation for a state program constitutes the legislature's determination~~
 30 ~~that the state program is necessary and that federal constitutional authority and state constitutional or~~

1 ~~statutory authority exist. State appropriations may not be based solely on requirements found in~~
 2 ~~regulations, guidelines, or policies of a federal agency.~~

3 ~~(d) Prior to recommending to the legislature a budget for a state agency that is charged with~~
 4 ~~implementing federal mandates, the office of budget and program planning and the legislative finance~~
 5 ~~committee~~ GOVERNOR shall require that the state agency provide information regarding any monetary
 6 savings for the state and any reduction in regulatory burdens on local governments and on the public that
 7 could be or have been achieved through the development of state policies that meet the intent of the
 8 APPLICABLE federal ~~statute~~ STATUTES but do not necessarily follow all applicable federal regulations,
 9 guidelines, or policies. The state agency shall also provide advice to the ~~office of budget and program~~
 10 ~~planning and the legislative finance committee~~ GOVERNOR regarding any changes in state statutes that are
 11 necessary to provide the state agency the authority to implement state policies in such a way as to create
 12 additional savings or greater reductions in regulatory burdens. The ~~office of budget and program planning~~
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 14 ~~this section [SECTION 5] and recommendations regarding any possible public and private sources of money~~
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25 (e) the citizens of this state can create and wish to create innovative solutions to Montana's
26 problems, but the current manner in which legal challenges to state policies and federal programmatic
27 substitutions of state programs are handled does not allow the state the flexibility it needs. It is not
28 possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes
29 unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is
30 shifted to the person or agency who asserts the insufficiency.

1 (f) the provisions of [sections 1 through ~~6~~ 8] will better balance the exercise of the powers of the
 2 federal government and the powers reserved to the states. In addition, the application of [sections 1
 3 through ~~6~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct
 4 the state to implement federal statutes at the least possible cost and will make more money available for
 5 other needs.

6 (g) the purpose of [sections 1 through ~~6~~ 8] is to ensure that federal mandates EXISTING ON OR
 7 ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with
 8 state policy as established by the legislature;

9 (H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE
 10 OF ACTION.

11
 12 NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~6~~ 8], unless the context
 13 otherwise requires, the following definitions apply:

14 (1) "Federal statute" means a federal statute that is in accord with the United States constitution
 15 and that imposes mandates on state or local governments. ~~The term includes but is not limited to the~~
 16 ~~following:~~

17 ~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

18 ~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

19 ~~(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;~~

20 ~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

21 ~~(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as~~
 22 ~~amended;~~

23 ~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,~~
 24 ~~42 U.S.C. 9601, et seq., as amended;~~

25 ~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as~~
 26 ~~amended;~~

27 ~~(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;~~

28 ~~(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as~~
 29 ~~amended;~~

30 ~~(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;~~

1 ~~(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;~~

2 ~~(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;~~

3 ~~(m) the federal Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001,~~
4 ~~et seq., as amended;~~

5 ~~(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751,~~
6 ~~et seq., as amended;~~

7 ~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~

8 ~~(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as~~
9 ~~amended;~~

10 ~~(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;~~

11 ~~(r) federal highway safety programs;~~

12 ~~(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as~~
13 ~~amended;~~

14 ~~(t) the federal Educate America Act, Public Law 103-227.~~

15 (2) "Legislative council" means the statutory committee established in 5-11-101.

16 ~~(3) "Legislative finance committee" means the statutory committee established in 5-12-201.~~

17
18 **NEW SECTION. Section 4. State programs to implement federal statutes.** (1) A state official or
19 employee charged with the duty of implementing a federal statute shall implement the law as required by
20 the federal statute in good faith and with a critical view toward the provisions of any federal regulation,
21 guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that
22 are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

23 (2) An executive branch agency of state government that is authorized to develop a state
24 program to respond to any mandates contained in a federal statute shall develop the state program and
25 promulgate any necessary rules, using the following criteria:

26 (a) State programs should be developed by the state agency to meet the requirements of federal
27 statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

28 (b) State programs should be developed with due consideration of the financial restraints of local
29 governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII,
30 section 9, of the Montana constitution.

1 (c) A state program that implements the goals of the federal statute should provide for the most
 2 efficient method possible, with careful consideration given to the cost of the program and the impact of
 3 the program on local governments and Montana citizens and on the long-range public health, safety, and
 4 welfare of citizens of the state.

5
 6 NEW SECTION. Section 5. ~~Legislative finance committee reports to legislative council~~
 7 **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES -- savings.**

8 ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed~~
 9 ~~implementation of this section.~~

10 ~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for~~
 11 ~~the program may not be enacted unless:~~

12 ~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

13 ~~(ii) the state program is necessary to implement the federal statute;~~

14 ~~(iii) the operation of the state program benefits the state by providing a cost effective~~
 15 ~~implementation of the federal statute by the state, by local government, and by business; or~~

16 ~~(iv) the state program benefits the state, local government, and business by providing a~~
 17 ~~cost effective means to meet a higher public health, safety, and welfare standard established under state~~
 18 ~~law.~~

19 ~~(b) Each state agency that makes a budget request for an appropriation for a state program~~
 20 ~~authorized or mandated by federal statute shall include in its budget request citations to the federal~~
 21 ~~constitutional provisions and the state constitutional or statutory provisions that authorize the state~~
 22 ~~program. The legislative finance committee shall review the budget request and determine whether~~
 23 ~~additional state statutory authority is required in order to implement the state program and shall make~~
 24 ~~recommendations to the legislature and the legislative council.~~

25 ~~(c) The legislature, after receiving a recommendation from the legislative finance committee and~~
 26 ~~the legislative council, shall determine whether a state program is necessary and whether federal~~
 27 ~~constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise~~
 28 ~~a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or~~
 29 ~~policies. Enactment of a state appropriation for a state program constitutes the legislature's determination~~
 30 ~~that the state program is necessary and that federal constitutional authority and state constitutional or~~

1 ~~statutory authority exist. State appropriations may not be based solely on requirements found in~~
 2 ~~regulations, guidelines, or policies of a federal agency.~~

3 ~~(d) Prior to recommending to the legislature a budget for a state agency that is charged with~~
 4 ~~implementing federal mandates, the office of budget and program planning and the legislative finance~~
 5 ~~committee GOVERNOR shall require that the state agency provide information regarding any monetary~~
 6 ~~savings for the state and any reduction in regulatory burdens on local governments and on the public that~~
 7 ~~could be or have been achieved through the development of state policies that meet the intent of the~~
 8 ~~APPLICABLE federal statute STATUTES but do not necessarily follow all applicable federal regulations,~~
 9 ~~guidelines, or policies. The state agency shall also provide advice to the office of budget and program~~
 10 ~~planning and the legislative finance committee GOVERNOR regarding any changes in state statutes that are~~
 11 ~~necessary to provide the state agency the authority to implement state policies in such a way as to create~~
 12 ~~additional savings or greater reductions in regulatory burdens. The office of budget and program planning~~
 13 ~~GOVERNOR shall review and compile the information received from state agencies pursuant to this section~~
 14 ~~and shall include recommendations in its annual budget request to the legislative finance committee THE~~
 15 ~~GOVERNOR'S BUDGET based upon the information.~~

16 ~~(3) For purposes of this section, "state program" does not include any portion of a program that~~
 17 ~~is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a~~
 18 ~~trusteeship or custodial capacity and that is not subject to appropriation by the legislature.~~

19
 20 **NEW SECTION. Section 6. Requests for information INFORMATION** regarding federal mandates.

21 ~~(1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one~~
 22 ~~or more requests for information regarding federal mandates on or before August 31, 1996. The requests~~
 23 ~~for information must be directed to persons involved with or affected by federal mandates, including but~~
 24 ~~not limited to the following:~~

25 ~~(a) public and private institutions of higher education both within and outside Montana and~~
 26 ~~individuals in the institutions who have developed a high degree of expertise in the subjects of federalism~~
 27 ~~and federal mandates;~~

28 ~~(b) attorneys in private practice who have dealt with federal mandate litigation or research; and~~

29 ~~(c) organizations and foundations that have an interest in the issues of federalism and the~~
 30 ~~imposition of federal mandates on local and state governments.~~

1 ~~(2) The issues addressed in the requests for information issued pursuant to this section must~~
2 include the following:

3 ~~(a) identification of federal mandates expressing broad federal policies that would best be~~
4 ~~implemented on a state by state basis or that could be resisted because of the unique circumstances that~~
5 ~~are present in each state and because of the unnecessary burdens that are created by federal regulations~~
6 ~~and policies;~~

7 ~~(b) legal theories that support the right of each state to implement or oppose federal mandates~~
8 ~~pursuant to the state's own policies;~~

9 ~~(c) practical methods, including the enactment of any state legislation, by which the state may fully~~
10 ~~exercise its authority in the implementation of federal mandates;~~

11 ~~(d) recommendations regarding federal legislation that would ensure that the states have the~~
12 ~~necessary authority to implement federal directives in a manner that is consistent with state policy and that~~
13 ~~is suited to the needs of each state; and~~

14 ~~(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana~~
15 ~~to match other funding sources or to cooperate with other entities in working toward federal mandate~~
16 ~~solutions.~~

17 ~~(3)(1) The requests for information prepared pursuant to this section [SECTION 5] must require that~~
18 ~~the initial responses be received by the staff of the legislative council and the office of legislative fiscal~~
19 ~~analyst by GOVERNOR October 16, 1995 PRIOR TO THE GOVERNOR'S PREPARATION OF THE STATE~~
20 ~~BUDGET FOR THE ENSUING BIENNIUM. The staff of the legislative council and the office of legislative~~
21 ~~fiscal analyst GOVERNOR may prepare additional requests for information to follow up and obtain further~~
22 ~~details regarding the initial responses that were received.~~

23 ~~(2) IN CONSIDERING THE LEGALITY OR COST-EFFECTIVENESS OF A FEDERAL MANDATE,~~
24 ~~FEDERAL STATUTE, OR STATE PROGRAM, THE GOVERNOR MAY REQUEST ASSISTANCE FROM THE~~
25 ~~LEGISLATIVE COUNCIL OR ITS STAFF, BUT ASSISTANCE IS AT THE DISCRETION OF THE LEGISLATIVE~~
26 ~~COUNCIL.~~

27
28 ~~NEW SECTION. Section 7. Report -- recommendations. (1) The staff of the legislative council and~~
29 ~~the office of legislative fiscal analyst GOVERNOR shall examine the information received through the~~
30 ~~requests for information prepared pursuant to [section 6 5] and, based upon the information, shall jointly~~

1 present a report to ~~the governor, the legislative council, and the legislative finance committee on or before~~
 2 ~~December 1, 1996, AND THE LEGISLATURE MEETING IN ITS NEXT REGULAR SESSION~~ that includes the
 3 following:

4 (a) recommendations regarding:

5 (i) contracts that the ~~committees~~ STATE may enter into with specified persons or entities to
 6 conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; ~~or~~

7 AND

8 (ii) ~~a request for proposals process to obtain bids for contracts to provide services regarding federal~~
 9 ~~mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the~~
 10 ~~results of any research or analysis performed under the contracts be received by the committees on or~~
 11 ~~before July 1, 1996; and~~

12 (b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative~~
 13 ~~council and the office of legislative fiscal analyst~~ SUBMITTED TO THE GOVERNOR under the provisions of
 14 this section [SECTION 5] and ~~recommendations regarding any possible public and private sources of money~~
 15 ~~to fund the efforts, including any appropriations by the legislature that may be required.~~

16 (2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does
 17 not serve Montana public policy, or does not conform to Montana customs and culture, the governor may
 18 issue an executive order declaring the intention of Montana to not implement the mandate AND MAY
 19 DIRECT THE ATTORNEY GENERAL TO VIGOROUSLY REPRESENT THE STATE OF MONTANA IN ANY
 20 ACTION THAT RESULTS FROM OR THAT IS NECESSARY TO EFFECT THE EXECUTIVE ORDER.

21
 22 NEW SECTION. SECTION 8. LEGISLATIVE REVIEW AND OVERSIGHT. (1) IN EXERCISING ITS
 23 AUTHORITY AS AN EQUAL BRANCH OF STATE GOVERNMENT, THE LEGISLATURE MAY CONDUCT ANY
 24 LEGAL REVIEW OR FISCAL ANALYSIS THAT IT CONSIDERS NECESSARY TO EFFECT THE PURPOSE AND
 25 INTENT OF [SECTIONS 1 THROUGH 8]. THE GOVERNOR, THE DIRECTOR OR CHIEF EXECUTIVE OFFICER
 26 OF ANY AGENCY WITHIN THE EXECUTIVE BRANCH, OR ANY OFFICER LISTED IN ARTICLE VI, SECTION
 27 1, OF THE MONTANA CONSTITUTION SHALL, UPON REQUEST BY THE LEGISLATURE, IMMEDIATELY
 28 PROVIDE ANY INFORMATION PREPARED, COMPILED, DEVELOPED, DETAILED, DESCRIBED,
 29 REFERENCED, ANALYZED, REPORTED, OR IN ANY OTHER MANNER CONSIDERED IN CONJUNCTION
 30 WITH [SECTIONS 1 THROUGH 8].

