

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

May 8, 2017

The Honorable Corey Stapleton
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary Stapleton:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 100 (HB 100), "AN ACT REVISING LEGISLATIVE POLLING PROCEDURES CONCERNING ADMINISTRATIVE RULES; CLARIFYING PUBLISHING REQUIREMENTS FOR POLL RESULTS; SPECIFYING POLLING VOTE REQUIREMENTS AND THE EFFECTS OF UNRETURNED BALLOTS; PRESCRIBING POLLING PROCEDURES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

HB 100 revises the legislative polling procedures for determining if an administrative rule is contrary to legislative intent. Under current law, a majority vote of each chamber of the legislature is needed to determine if a proposed rule is contrary to legislative intent. If a majority of legislators decide a proposed rule is contrary to their intent, then in any subsequent court proceeding involving its validity it is "conclusively presumed to be contrary to . . . legislative intent." § 2-4-403, MCA. With such a vote, a rule is much more likely to be struck down by the courts if challenged.

HB 100 dramatically lowers these requirements. First, the bill would require only the majority of a *quorum* of legislators in each chamber to establish that a rule is contrary to legislative intent. A quorum of the House is 51, and a majority of that is 26. A quorum of the Senate is 26, and a majority of that is 14. Thus, only 40 legislators out of 150 would be able to decide the fate of a rule.

Further, HB 100 would apply even after rules have been adopted by an executive agency. Under existing law, the legislature may take a vote on *proposed* rules. If the legislature votes that proposed rules are contrary to legislative intent, then a state agency has the opportunity to alter the rules before final adoption to address any legislative concerns. Under HB 100, a poll of the legislature can occur up to 180 days *after* a rule has been adopted. A legislative poll six months after rules are in effect could dramatically undermine their effectiveness, causes uncertainty for the regulated community, and negates any possibility of the agency working with the legislature to resolve any concerns.

Secretary Stapleton

May 8, 2017

Page 2

While it is important to have legislative oversight over agency operations, HB 100 goes too far. The bill would enable a small minority of legislators to interfere with agency operations in a manner that is not consistent with separation of powers. Existing law far more effectively balances legislative oversight with deference to agency rulemaking expertise.

For these reasons, I veto HB 100.

Sincerely,



STEVE BULLOCK
Governor

cc: Legislative Services Division
Scott Sales, President of the Senate
Austin Knudsen, Speaker of the House