



Big Sky Country
MONTANA STATE LEGISLATURE

May 19, 2023

Mr. Todd Everts
Director of Legal Services & Code Commissioner
Legislative Services Division
Montana State Capitol
Helena, MT 59601

Dear Mr. Everts:

We are writing to dispute your interpretation that the 68th Montana Legislature does not have the opportunity to override the Governor's veto on SB 442 via polling. Your interpretation of the constitution, code, and legislative rule will deprive our co-equal branch of government of practical and important methods to override a veto that the Constitution protects. As you are aware, the Governor's veto letter was not read over the rostrum in the Senate (the originating chamber) before the Senate adjourned Sine Die.

We have no evidence that the letter was delivered to the Senate before the body adjourned. The Montana Constitution makes clear the process for how a governor's veto should be handled under the two situations where: (1) both houses are "present," and (2) when the Legislature is "not in session." Of course, the Constitution does not define "not in session." In particular, it is silent about the procedure to be followed when one chamber has adjourned Sine Die (is not "present") and the other chamber is still in session ("present").

Both legislative rule and Montana statute are clear that the legislative chamber must be notified of the veto if the Legislature is present. Legislative rules for the 68th Legislature are also clear on the procedure for overriding a veto: JR 40-220 states that "when the presiding officer receives a veto message, the presiding officer shall read it to members over the rostrum." The rule goes on to make clear that it is only after the veto message is read across the rostrum that the Legislature has the opportunity to act, noting "after the reading, a member may move that the Governor's veto be overridden."

Because the veto message was not read across the rostrum by the presiding officer on May 2nd, the veto was not delivered while the Senate was in session and the Senate was never able to act on the veto. Mason's Rules and Montana Code Annotated are both clear that veto overrides start in the originating chamber, yet the Senate adjourned Sine Die prior to the veto message being delivered to the body. Because of the overwhelming support of 130 aye votes, a mail poll by the Secretary of State is triggered and must be conducted. The constitutionally protected right of the Legislative Branch to override a veto cannot be circumvented by the Executive Branch attempting to find a constitutional loophole between both chambers being present and the Legislature not being session.

Although we hesitate to impugn the motives of the Governor, we are disturbed by the speed with which SB 442 was enrolled, transferred, and vetoed. It is widely understood that overriding a governor's veto is harder to do via poll after legislators have dispersed than to take advantage of legislative momentum and override during a session, while members are still present. It appears that the governor's office moved with speed in order to act in a perceived "dead zone" that would attempt to circumvent the Legislature's constitutionally protected ability to override.

The precedent your interpretation sets could be used by future executives to intentionally undermine the constitutional check that a veto override provides the Legislature on the actions of the Executive. Under your interpretation, an executive could hold any veto memos within 10 days of a bill being delivered to them until the first chamber adjourns sine die. Upon sine die adjournment of the first chamber, the Governor can transmit veto memos while the second chamber is still in session and the Legislature would have no ability to override vetoes of any of the affected legislation. We are exceptionally concerned about the long-term implications of this interpretation and would like your guidance and rebuttal if you see another practical impact of your interpretation.

To illustrate the danger of this precedent, consider the ramifications for future actions on the general appropriations act (HB 2). On day 87 of a legislative session, the House sends a final HB 2 to the Governor for his signature then adjourns Sine Die. The Senate remains in session to finish outstanding legislative business, and the Governor returns a veto message which includes line-item vetoes of the budget while the Senate is in session. Under your interpretation, the Legislature would have no opportunity to override these line-item vetoes, giving the executive final and unchecked authority on what is constitutionally the sole responsibility of the Legislative Branch – appropriations. This significantly weakens the Legislative Branch and is constitutionally unacceptable.

From our perspective as legislators, the only constitutionally sound argument is that for the purposes of interpreting Article VI, Section 10, of the Montana Constitution, a Legislature is not in session once one chamber has adjourned sine die.

Sincerely,

House Minority Leader Kim Abbott

Senator Dan Bartel

Senate Minority Leader Pat Flowers

Senator Mike Lang

Representative Katie Sullivan