



Economic Affairs Interim Committee

69th Montana Legislature

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January 16, 2025

TO: Economic Affairs Interim Committee (EAIC)
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking, Rule Review, and Gambling

During its recent meeting, EAIC considered a rule under the supervision of the State Administration and Veterans' Affairs Interim Committee (SAVA) that relates to gambling and the state lottery. The rule, MAR 2025-272.1, from the State Lottery and Sports Wagering Commission, concerned bulk purchasing of lottery tickets. During the discussion, EAIC inquired about its statutory authority over gambling rules in addition to discussing potential legislation consolidating all gambling rule review under one committee. This memo describes the current statutory scheme for session and interim committee review of gambling rules. This memo also briefly examines consolidation of gambling under the EAIC.

The Montana Constitution, Gambling, Various Regulatory Entities

Article III, Section 9 of the Montana Constitution provides the framework for all gambling laws in this state. This provision generally prohibits all forms of gambling and lotteries unless authorized by the Montana Legislature:

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

The legislature has generally prescribed for gambling in Title 23, compartmentalized as follows: Chapter 4 concerns horseracing, specifically parimutuel gambling under the Board of Horseracing, which is allotted to the Department of Commerce for administrative purposes. Chapters 5 and 6 concern gambling and amusement games, with the Department of Justice, Gambling Control Division as the regulatory authority. Chapter 7 concerns lottery and sports wagering gambling under the State Lottery and Sports Wagering Commission. The commission is placed under the administrative auspices of the Department of Administration.

Business and Labor Standing Committees and EAIC, Session vs. Interim

During a legislative session, the legislative rules provide that the business and labor committees have general authority over all bills that concern gambling:

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

However, during the interim, rule review authority over gambling is not under the exclusive jurisdiction of the EAIC. Montana Code Annotated 5-5-223(1), provides administrative rule review, draft legislation review, program evaluation and monitoring functions to the EAIC only for the enumerated agencies:

5-5-223. Economic affairs interim committee. (1) The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) department of agriculture;
- (b) department of commerce;
- (c) department of labor and industry;
- (d) department of livestock;
- (e) office of the state auditor and insurance commissioner;
- (f) office of economic development;
- (g) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;
- (h) the division of banking and financial institutions provided for in 32-1-211; and
- (i) the divisions of the department of revenue that administer the Montana Alcoholic Beverage Code and the Montana Marijuana Regulation and Taxation Act.

Importantly, 5-5-223 does not give EAIC rule review authority over entities within the Department of Administration or the Department of Justice.

Interim: Types of Gambling in LJIC and SAVA

The Law and Justice Interim Committee (LJIC) and State Administration and Veterans' Affairs Interim Committee (SAVA) respectively have rule review authority over two different types of gambling: gambling in general, and gambling through the state lottery and sports wagering commission.

LJIC has authority over the Department of Justice in 5-5-226:

5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, the department of justice except for the motor vehicle division pursuant to 5-5-233, and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

The Department of Justice administers the Gambling Control Division, which has general authority over all gambling in the state in 23-5-111:

23-5-111. Construction and application. In view of Article III, section 9, of the Montana constitution, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by those parts.

On the other hand, SAVA has authority over the Department of Administration in 5-5-228(1):

5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

- (a) department of administration, except:
 - (i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;
 - (ii) the Montana tax appeal board established in 2-15-1015;
 - (iii) the division of banking and financial institutions; and
 - (iv) the office of state public defender;
 - (b) department of military affairs; and
 - (c) office of the secretary of state.
- (2) The committee shall:
- (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;
 - (b) establish principles of sound fiscal and public policy as guidelines;
 - (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and
 - (d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.
- (3) The committee may:
- (a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and
 - (b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.

The Department of Administration administers the State Lottery and Sports Wagering Commission in 23-7-201(9):

23-7-201. State lottery and sports wagering commission — allocation — composition — compensation — quorum. (1) There is a state lottery and sports wagering commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner must be appointed to a 4-year term of office, and the terms must be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

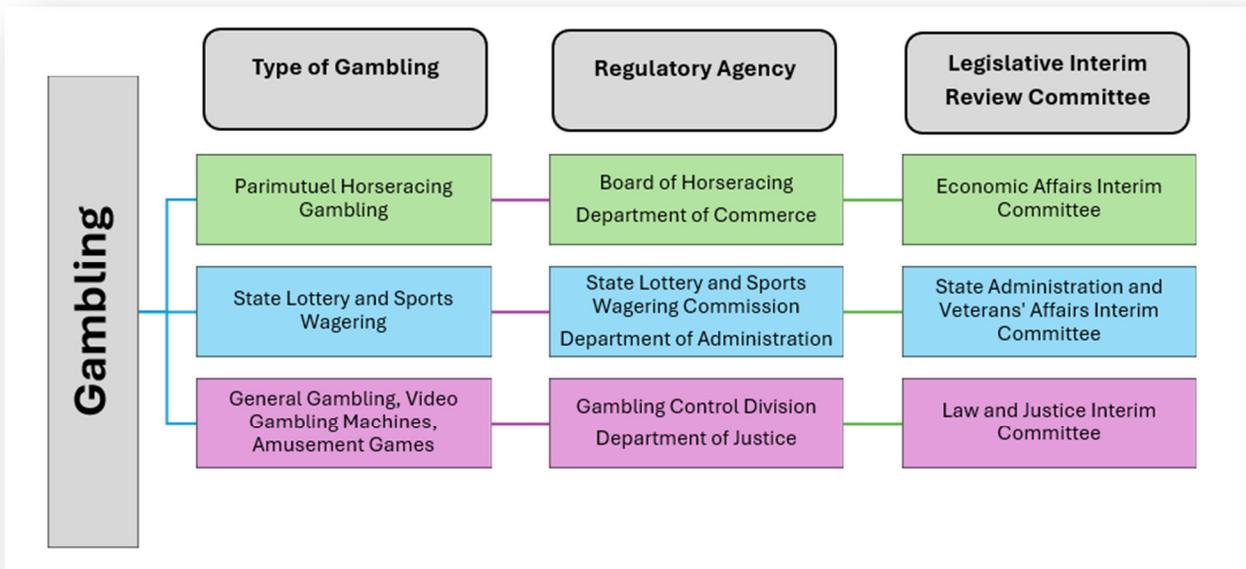
(6) The commission shall elect one of its members as presiding officer.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, as provided in 2-15-122 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

The following chart describes the legislative review for interim committees relating to gambling:



Potential Legislative Change

At its November 13, 2025 meeting, EAIC inquired relating to potential legislation consolidating interim review and program oversight authority of all gambling under one interim committee. Any legislation would necessarily include amendments to 5-5-223 (EAIC), 5-5-226 (LJIC), and 5-5-228 (SAVA). The bill would be similar to [House Bill 16](#) drafted at the behest of the 2015-2016 EAIC. The bill added authority over the Alcoholic Beverage Control Division (ABCD) to EAIC by amending 5-5-223:

Section 1. Section 5-5-223, MCA, is amended to read:

"5-5-223. Economic affairs interim committee. (1) The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) department of agriculture;
 - (b) department of commerce;
 - (c) department of labor and industry;
 - (d) department of livestock;
 - (e) office of the state auditor and insurance commissioner;
 - (f) office of economic development;
 - (g) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; ~~and~~
 - (h) the division of banking and financial institutions provided for in 32-1-211; and
 - (i) the division of the department of revenue that administers the Montana Alcoholic Beverage Code.
- (2) The state compensation insurance fund shall annually provide to the committee a report on its budget as approved by the state compensation insurance fund board of directors."

Like the 2017 legislation that carved out ABCD from the rule review purview of the Revenue Interim Committee (RIC), a legislative change putting rule review authority of all gambling under the EAIC would respectively carve out the Gambling Control Division from LJIC and the State Lottery and Sports Wagering Commission from SAVA.