EXHIBIT #6
DATE 3-9-11
NO. SB 307

Amendments to Senate Bill No. 307
3rd Reading Copy

Requested by Representative Wayne Stahl

For the House State Administration Committee

Prepared by Susan Byorth Fox
March 8, 2011 (1:10pm)

1. Title, line 4.
Following: "ACT"
Insert: "REVISING THE PRIVATIZATION PLAN REVIEW PROCESS;"

2. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS 2-8-102,"
Following: "2-8-105,"
Insert: "2-8-301, AND 2-8-304,"

3. Page 1, line 23.
Following: line 22
Insert: "**Section 2.** Section 2-8-102, MCA, is amended to read:

"**2-8-102. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency, with special regard to the duplication of efforts between the audited agency or program and other agencies or programs and the quality of service being rendered.

(3) "Privatization" means to transfer control or management of an agency, program, or service from the public sector to the private sector.

~~(3)~~(4) "Program" means any legislatively or administratively created function, project, or duty of an agency."

{*Internal References to 2-8-102: None.x*}"
Renumber: subsequent sections

4. Page 2, line 7.
Strike: "recommendations"
Insert: "a report"

5. Page 2, line 8.
Strike: "in the form of a report"

6. Page 2, line 11.
Following: line 10
Insert: "**Section 4.** Section 2-8-301, MCA, is amended to read:

"**2-8-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government.

(2) "Private sector" means any entity or individual not principally a part of or associated with a governmental unit that is associated with or involved in commercial activity.

(3) (a) "Privatize" means ~~an agency contracting with the private sector to provide services that are currently or normally conducted directly by the employees of the state~~ to transfer control or management of an agency, program, or service from the public sector to the private sector.

(b) The term does not include contracting with the private sector to provide services ~~on a temporary or emergency basis~~.

(4) "Program" means a legislatively or administratively created function, project, or duty of an agency."
{*Internal References to 2-8-301: None.x*}"

Insert: "**Section 5.** Section 2-8-304, MCA, is amended to read:

"**2-8-304. Review of privatized programs.** (1) If during audits of state agencies, the legislative auditor identifies programs being conducted by an agency under contract that may be administered more cost-effectively directly by the agency or identifies services performed by an agency that may be performed more cost-effectively by the private sector, the legislative auditor shall submit this information to the legislative audit committee.

~~(2) Members of the public, elected bargaining agents or employee representatives, elected officials, legislators, and agency directors may submit to the legislative audit committee a request to review programs being conducted under contract by an agency that may be administered more cost-effectively directly by the agency.~~

~~(3)~~(2) The office of budget and program planning ~~shall~~ may submit to the legislative audit committee, by July 1 of each odd-numbered year:

(a) a list of all programs accounted for in an enterprise fund or an internal service fund; and

(b) a request for privatization review under subsection (1) of at least two of the programs identified in subsection ~~(3)(a)~~ (2)(a), including any available information and criteria required under 2-8-303.

~~(4)~~(3) The legislative audit committee shall review the

information and requests provided under ~~subsections~~ subsection (1) ~~and (2)~~ and may direct the legislative auditor to conduct a review of any contracted program or program administered directly by the agency, or both. The review must include a report to the legislative audit committee that includes the information required in a privatization plan under 2-8-303.

~~(5)~~(4) The report required by subsection ~~(4)~~ (3) must be provided to the legislative audit committee and released to the public. Not less than 30 days after the release of the report, the legislative audit committee shall conduct a public hearing on the report at which public comments and testimony must be received. Upon completion of the hearing on the report, the legislative audit committee may make recommendations that it believes appropriate concerning the program."

{*Internal References to 2-8-304: None.x*}"

Renumber: subsequent sections

- END -

Explanation - This amendment reconciles the new section on termination or privatization review by legislative interim committees with existing law on review of privatized programs by the legislative auditor and committee. This amendment provides the public access to legislative interim committee process, whereas the legislative audit process will be used only by the office of budget and program planning. This amendment also provides the same definition of privatization for both processes. By providing a report rather than a recommendation, the legislative auditor preserves audit independence.