

HOUSE BILL NO. 86
INTRODUCED BY J. MUSGROVE
BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LEGISLATIVE AUDIT ACT TO REFLECT CURRENT PROFESSIONAL STANDARDS AND AUDITING PRACTICES; PROVIDING FOR REPORTING OF APPARENT VIOLATIONS OF THE STATE CODE OF ETHICS TO THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR AUDIT SELECTION BASED ON RISK; REQUESTING THE GOVERNOR, BOARD OF REGENTS, AND JUDICIARY TO FURNISH RECOMMENDATIONS FOR AUDITS; PROVIDING EMPLOYMENT PROTECTION TO EMPLOYEES WHO PROVIDE INFORMATION TO THE LEGISLATIVE AUDIT COMMITTEE; AND AMENDING SECTIONS 5-13-101, 5-13-304, 5-13-308, 5-13-309, AND 5-13-321, MCA."

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

Section 1. Section 5-13-101, MCA, is amended to read:

"5-13-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public ~~moneys~~ money, designating the sources from which ~~moneys~~ money may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of ~~fiscal~~ books, accounts, activities, and records so that it may be assured that its directives have been ~~faithfully~~ carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties."

Section 2. Section 5-13-304, MCA, is amended to read:

"5-13-304. Powers and duties. The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a ~~special~~ an audit to meet the standards and accomplish the objectives required in 5-13-308 whenever the legislative auditor determines it necessary and shall ~~so~~ advise the members of the legislative audit

committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;

~~(6)~~(7) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

~~(7)~~(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection."

Section 3. Section 5-13-308, MCA, is amended to read:

"5-13-308. Audit standards and objectives. The objectives of financial compliance, performance, and information system audits of state agencies or their programs conducted by the legislative auditor are formulated, defined, and conducted in accordance with industry standards established for auditing to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, ~~and~~ effectively, ~~and~~ in accordance with legislative intent;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets, including information technology, of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control

agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations."

Section 4. Section 5-13-309, MCA, is amended to read:

"5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, activities, and records.

(2) The legislative auditor may examine at any time the books, accounts, activities, and records, confidential or otherwise, of a state agency. This ~~shall~~ section may not be construed as authorizing the publication of information ~~which the prohibited by law prohibits publishing~~.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state ~~moneys~~ money or property under ~~his~~ that agency's control or for which ~~he~~ the agency is responsible."

Section 5. Section 5-13-321, MCA, is amended to read:

"5-13-321. Joint audits of medicaid program. (1) The legislative auditor ~~shall~~ may participate with the ~~United States department of health and human services office of the inspector general in a program of joint audits of the Montana medicaid program authorized by Title 53, chapter 6~~ audit oversight organizations on joint audits of Montana programs or services. For the purpose of the joint audits, the legislative auditor may cooperate with the ~~inspector general~~ audit oversight organizations, accept and provide information necessary to the success of the joint audits, and enter into contracts for the performance of the joint audits. Audits authorized by this section may examine all or any part of the financing or performance of ~~the medicaid a~~ a program, whether operated directly by ~~the department of public health and human services, by another~~ a state agency; or by a contractor with a state agency. Joint audits are subject to the audit standards, objectives, and reporting procedures required by state law and as required in applicable federal laws, regulations, and policies.

(2) Audit costs of the legislative auditor for conducting joint audits authorized by subsection (1) are considered direct costs of the state agency or program subject to the audit. Funds for the payment of the expenses of the legislative auditor must be deposited in the state special revenue fund as provided in 5-13-403. To the maximum extent allowable under federal regulations, the legislative auditor shall charge audit costs of joint audits to federal funds.

(3) Audits conducted pursuant to this section must be approved by the committee as part of the operational plan of the legislative auditor."

NEW SECTION. Section 6. Audit selection based on risk. (1) In selecting and prioritizing the agencies or programs for audit under 5-13-304, the legislative auditor shall consider the agency's or program's financial, operational, and technological risks associated with meeting its intended purpose, goals, objectives, and legal mandates.

(2) To aid in identifying agencies and programs for audit, the committee shall, before July 1 of each odd-numbered year, request that the governor, the board of regents, and the judiciary furnish the committee with a list of any recommendations for agencies and programs within the governor's, board of regents', or judiciary's respective jurisdiction to be considered for audit during the next biennium pursuant to this chapter. The list may be prioritized and must set forth the reasons for recommending each agency or program to be considered based on the risk criteria in subsection (1).

(3) The legislative auditor shall review the lists, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and consult with the committee as necessary.

NEW SECTION. Section 7. Employment protection. An employee of the state of Montana or an authorized contractor who provides information to the committee, the legislative auditor, or the legislative auditor's authorized designee may not be subject to any penalties, sanctions, RETALIATION, or restrictions in connection with the employee's or contractor's employment as a result of the disclosure of information unless the employee or contractor disclosing the information ~~is criminally or civilly liable or has violated written administrative policy~~ HAS VIOLATED STATE LAW.

NEW SECTION. Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 5, chapter 13, part 3, and the provisions of Title 5, chapter 13, part 3, apply to [sections 6 and 7].

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