

SENATE BILL NO. 76

INTRODUCED BY K. GILLAN

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE AND THE REVENUE AND
TRANSPORTATION INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS GOVERNING ACCESS TO TAX INFORMATION; PROVIDING FOR ACCESS TO ~~ALL~~ CERTAIN TAX INFORMATION BY THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL INFORMATION DISCLOSED TO THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND 17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Federal return information. (1) Except as provided by section 6103 of the Internal Revenue Code, 26 U.S.C. 6103, and subsection (2) of this section, it is unlawful to knowingly or purposely divulge or make known in any manner any federal tax return or federal tax return information submitted on state tax returns pursuant to state law.

(2) The department shall furnish state return information to the legislative auditor, THE legislative fiscal analyst PURSUANT TO 5-12-303, and the office of budget and program planning ~~upon request~~ PURSUANT TO 17-7-111, unless the furnishing of the information requested is specifically prohibited by federal or state law. THE LEGISLATIVE FISCAL ANALYST AND THE OFFICE OF BUDGET AND PROGRAM PLANNING MAY DISCLOSE STATE RETURN INFORMATION TO EACH OTHER. State return information includes information on or a copy of any portion of a federal return or any information from a federal return that is required to be attached or included in a state return under state law.

(3) INCOME TAX INFORMATION HELD BY THE DEPARTMENT, THE LEGISLATIVE AUDITOR, THE LEGISLATIVE FISCAL ANALYST, AND THE OFFICE OF BUDGET AND PROGRAM PLANNING ARE SOLELY FOR THEIR OFFICIAL USE AND ARE NOT A PUBLIC RECORD.

~~(3)~~(4) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public officer or employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

Section 2. Section 5-12-303, MCA, is amended to read:

"5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records ~~and tax records~~.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.~~

(3) (A) THE DEPARTMENT OF REVENUE SHALL MAKE MONTANA INDIVIDUAL INCOME TAX INFORMATION AVAILABLE BY REMOVING NAMES, ADDRESSES, AND SOCIAL SECURITY NUMBERS AND SUBSTITUTING IN THEIR PLACE A STATE ACCOUNTING RECORD IDENTIFIER NUMBER. EXCEPT FOR THE PURPOSES OF COMPLYING WITH FEDERAL LAW, THE DEPARTMENT MAY NOT ALTER THE DATA IN ANY OTHER WAY.

(B) THE DEPARTMENT OF REVENUE SHALL PROVIDE THE NAME AND ADDRESS OF A TAXPAYER ON WRITTEN REQUEST OF THE LEGISLATIVE FISCAL ANALYST WHEN THE VALUES ON THE REQUESTED RETURN, INCLUDING ESTIMATED PAYMENTS, ARE CONSIDERED NECESSARY BY THE LEGISLATIVE FISCAL ANALYST TO PROPERLY ANALYZE STATE REVENUE AND ARE OF A SUFFICIENT MAGNITUDE TO MATERIALLY AFFECT THE ANALYSIS AND WHEN THE IDENTITY OF THE TAXPAYER IS NECESSARY TO EVALUATE THE EFFECT OF THE RETURN OR PAYMENTS ON THE ANALYSIS BEING PERFORMED.

~~(4)~~(3)(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement

recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

~~(5)(4)(5)~~ This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure OR IF THE DEPARTMENT OF REVENUE NOTIFIES THE FISCAL ANALYST THAT SPECIFIED RECORDS OR INFORMATION MAY CONTAIN CONFIDENTIAL INFORMATION."

Section 3. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in 5-12-303, [section 1], 17-7-111, and subsections (7) and (8) of this section, or in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to ~~knowingly or purposely~~ divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom

an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding ~~\$1,000~~ or by imprisonment in the county jail for a term not exceeding ~~1 year~~, or both \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) ~~The~~ ON WRITTEN REQUEST TO THE DIRECTOR OR A DESIGNEE OF THE DIRECTOR, THE department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and

abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, and [section 1], AND 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

Section 4. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to ~~knowingly or purposely~~ divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) ~~The~~ ON WRITTEN REQUEST TO THE DIRECTOR OR A DESIGNEE OF THE DIRECTOR, THE department shall ~~on~~ request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) ~~deliver~~ provide corporation income tax ~~data~~ information, including any information that may be required under Title 15, chapter 30, part 11, to the legislative fiscal analyst, as provided in 5-12-303 or [section 1], and the office of budget and program planning, AS PROVIDED IN [SECTION 1] OR 17-7-111; ~~but the~~ The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed \$1,000 ~~or be imprisoned in~~

the county jail for a term not to exceed 1 year, or both \$500. If a public servant, as defined in 45-2-101, officer or public employee is convicted of violating this section, the person ~~forfeits~~ is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction."

SECTION 5. SECTION 17-1-132, MCA, IS AMENDED TO READ:

"17-1-132. Access to information. (1) The budget director ~~shall have~~ has the power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

(2) The budget director may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(3) When confidential records and information are obtained from a state agency, the budget director and staff are subject to the same penalties for unauthorized disclosure of the confidential records and information as are provided for under the laws administered by the state agency. The budget director shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(4) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the budget director that specified records or information may contain confidential information."

Section 6. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general

appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

- (i) a prioritized list of services that would be eliminated or reduced;
 - (ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and
 - (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- (g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and
- (h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding

bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

~~—— (6) The budget director may not obtain copies of individual income tax records protected under information as provided in 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data information is subject to the same restrictions on disclosure as are individual income tax returns.~~

(6) (A) THE DEPARTMENT OF REVENUE SHALL MAKE MONTANA INDIVIDUAL INCOME TAX INFORMATION AVAILABLE BY REMOVING NAMES, ADDRESSES, AND SOCIAL SECURITY NUMBERS AND SUBSTITUTING IN THEIR PLACE A STATE ACCOUNTING RECORD IDENTIFIER NUMBER. EXCEPT FOR THE PURPOSES OF COMPLYING WITH FEDERAL LAW, THE DEPARTMENT MAY NOT ALTER THE DATA IN ANY OTHER WAY.

(B) THE DEPARTMENT OF REVENUE SHALL PROVIDE THE NAME AND ADDRESS OF A TAXPAYER ON WRITTEN REQUEST OF THE BUDGET DIRECTOR WHEN THE VALUES ON THE REQUESTED RETURN, INCLUDING ESTIMATED PAYMENTS, ARE CONSIDERED NECESSARY BY THE BUDGET DIRECTOR TO PROPERLY ANALYZE STATE REVENUE AND ARE OF A SUFFICIENT MAGNITUDE TO MATERIALLY AFFECT THE ANALYSIS AND WHEN THE IDENTITY OF THE TAXPAYER IS NECESSARY TO EVALUATE THE EFFECT OF THE RETURN OR PAYMENTS ON THE ANALYSIS BEING PERFORMED."

NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 1].

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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