



AN ACT REVISING THE PRIVATIZATION PLAN REVIEW PROCESS; REQUIRING LEGISLATIVE INTERIM COMMITTEES TO SOLICIT PUBLIC INPUT ON TERMINATING OR PRIVATIZING PROGRAMS; REQUIRING THE LEGISLATIVE AUDITOR TO REVIEW THE RECOMMENDATIONS AND REPORT TO THE LEGISLATURE ON THE ADVANTAGES OR DISADVANTAGES OF TERMINATING OR PRIVATIZING A PROGRAM AND TO PROVIDE THE GOVERNOR WITH A COPY OF THE REPORT; AMENDING SECTIONS 2-8-102, 2-8-105, 2-8-301, AND 2-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Termination or privatization review by legislative interim committees.** (1) During the first year of a biennium, each interim committee shall, in at least one of its public meetings, provide an opportunity for members of the public to recommend terminating or privatizing any program administered by an executive branch agency or entity subject to the committee's oversight as provided in Title 5, chapter 5, part 2.

(2) (a) The interim committee shall submit any recommendations for the termination or privatization of any programs to the legislative auditor, and the legislative auditor shall review and report to the next legislature on the recommendations.

(b) The interim committee may submit recommendations for the termination or privatization of a program to the governor.

**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."

**Section 3.** Section 2-8-105, MCA, is amended to read:

**"2-8-105. Determination of agencies and programs to be reviewed.** (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) (a) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination.

(b) The legislative auditor shall review any recommendations made by a legislative interim committee for the termination or privatization of a program. The legislative auditor shall submit a report to the legislative audit committee and to the next legislature containing the legislative auditor's findings with respect to the advantages or disadvantages of terminating or privatizing the program. The legislative auditor shall provide the governor with a copy of the report."

**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."

**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."

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 8, part 1, and the provisions of Title 2, chapter 8, part 1, apply to [section 1].

**Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 0307, originated in the Senate.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 307

INTRODUCED BY B. TUTVEDT, KNOX

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