

SENATE BILL NO. 302

INTRODUCED BY J. ESP, M. DUNWELL, J. GROSS, S. HINEBAUCH, M. MACDONALD, K. REGIER,
D. SANDS, R. WEBB

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BUDGETING AND ACCOUNTING BY LOCAL GOVERNMENT ENTITIES; PROVIDING AUDIT TIMELINES; REQUIRING THE STOPPAGE OF STATE FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR THE REVIEW OF COMPLAINTS AGAINST LOCAL GOVERNMENT ENTITIES BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING AN INDEPENDENT CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT ENTITY; ALLOWING A FINANCIAL RECEIVER TO BE APPOINTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-515, 7-6-611, AND 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 2-7-515, MCA, is amended to read:

"2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall ~~notify~~ submit to the department ~~in writing as to a corrective action plan detailing~~ what action or actions they plan to take on any ~~deficiencies findings~~ findings or recommendations contained in the audit report. If no ~~deficiencies findings~~ findings or recommendations appear in the audit report, notification is not required. If the local government entity is a school district, the local government entity shall also send a copy of the corrective action plan to the superintendent of public instruction.

(2) Notification to the department shall include a statement by the governing bodies that noted ~~deficiencies findings~~ findings or recommendations for improvement have been acted ~~upon~~ on by adoption as recommended, adoption with modification, or rejection.

(3) ~~The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The~~ Within 30 days of receipt of the corrective action plan,

1 the department shall notify the entity of the acceptance or rejection of the corrective measures. If the department
 2 and the local government entity fail to agree on the corrective measures, a conference between the parties must
 3 be held within 30 days of the department's decision not to accept the local government entity's corrective
 4 measures. Failure to resolve significant findings or implement corrective measures ~~shall~~ must result in the
 5 withholding of financial assistance in accordance with rules adopted by the department pending resolution or
 6 compliance.

7 (4) In cases where a violation of law or nonperformance of duty is found on the part of an officer,
 8 employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county,
 9 city, or town attorney as provided by law. If a written request to do so is received from the department, the county,
 10 city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and
 11 nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town
 12 attorney fails or refuses to prosecute the case, the department ~~may~~ shall refer the case to the attorney general;
 13 ~~to The attorney general shall investigate and may TO~~ prosecute the case at the expense of the local government
 14 entity."
 15

16 **Section 2.** Section 7-6-611, MCA, is amended to read:

17 **"7-6-611. Role of department of administration.** (1) The department of administration shall prescribe
 18 for all local governments:

19 (a) general methods and details of accounting in accordance with generally accepted accounting
 20 principles as provided in 2-7-504;

21 (b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for
 22 in 2-7-503;

23 (c) the form of the annual financial report as provided in 2-7-503; and

24 (d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

25 (2) Local governments shall file with the department of administration:

26 (a) an annual financial report within 6 months of the fiscal yearend; and

27 (b) an audit report within 12 months of the end of the audited period.

28 (3) The governing body of each county or municipality shall notify the department of administration in
 29 writing, on a form prescribed by the department of administration, of the creation, dissolution, combination, or
 30 other legal alteration of any special purpose district within the county or municipality.

1 (4) Each special purpose district shall obtain a permanent mailing address and notify the department
2 of administration of the address and of any subsequent changes of the district's address.

3 (5) The department shall accept and review claims made pursuant to [sections 5 and 7]."
4

5 **Section 3.** Section 15-1-121, MCA, is amended to read:

6 **"15-1-121. Entitlement share payment -- purpose -- appropriation.** (1) As described in 15-1-120(3),
7 each local government is entitled to an annual amount that is the replacement for revenue received by local
8 governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant
9 to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later
10 enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other
11 revenue in the state treasury with each local government's share. The reimbursement under this section is
12 provided by direct payment from the state treasury rather than the ad hoc system that offset certain state
13 payments with local government collections due the state and reimbursements made by percentage splits, with
14 a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending
15 a portion to other local governments.

16 (2) The sources of dedicated revenue that were relinquished by local governments in exchange for an
17 entitlement share of the state general fund were:

18 (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter
19 584, Laws of 1999;

20 (b) vehicle, boat, and aircraft taxes and fees pursuant to:

21 (i) Title 23, chapter 2, part 5;

22 (ii) Title 23, chapter 2, part 6;

23 (iii) Title 23, chapter 2, part 8;

24 (iv) 61-3-317;

25 (v) 61-3-321;

26 (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment
27 of 61-3-509 in 2001;

28 (vii) Title 61, chapter 3, part 7;

29 (viii) 5% of the fees collected under 61-10-122;

30 (ix) 61-10-130;

- 1 (x) 61-10-148; and
2 (xi) 67-3-205;
3 (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
4 (d) district court fees pursuant to:
5 (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
6 (ii) 25-1-202;
7 (iii) 25-9-506; and
8 (iv) 27-9-103;
9 (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
10 (f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;
11 (g) all beer, liquor, and wine taxes pursuant to:
12 (i) 16-1-404;
13 (ii) 16-1-406; and
14 (iii) 16-1-411;
15 (h) late filing fees pursuant to 61-3-220;
16 (i) title and registration fees pursuant to 61-3-203;
17 (j) veterans' cemetery license plate fees pursuant to 61-3-459;
18 (k) county personalized license plate fees pursuant to 61-3-406;
19 (l) special mobile equipment fees pursuant to 61-3-431;
20 (m) single movement permit fees pursuant to 61-4-310;
21 (n) state aeronautics fees pursuant to 67-3-101; and
22 (o) department of natural resources and conservation payments in lieu of taxes pursuant to former Title
23 77, chapter 1, part 5.

24 (3) Except as provided in subsection (7)(b), the total amount received by each local government in the
25 prior fiscal year as an entitlement share payment under this section is the base component for the subsequent
26 fiscal year distribution, and in each subsequent year the prior year entitlement share payment, including any
27 reimbursement payments received pursuant to subsection (7), is each local government's base component. The
28 sum of all local governments' base components is the fiscal year entitlement share pool.

29 (4) (a) Except as provided in subsections (4)(b)(iv) and (7)(b), the base entitlement share pool must be
30 increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount

1 determined through the application of annual growth rates is the entitlement share pool for each fiscal year.

2 (b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share
3 pool for the next fiscal year in the following manner:

4 (i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of
5 state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the
6 statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second
7 previous completed fiscal years received from the sources referred to in subsections (2)(b), (2)(c), and (2)(g)
8 divided by the sum of the revenue for the second and third previous completed fiscal years received from the
9 same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous
10 completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate
11 income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third
12 previous completed fiscal years received from the same sources multiplied by 0.25.

13 (ii) Except as provided in subsections (4)(b)(iii) and (4)(b)(iv), the entitlement share growth rate is the
14 lesser of:

15 (A) the sum of the first factor plus the second factor; or

16 (B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

17 (iii) In no instance can the entitlement growth factor be less than 1. Subject to subsection (4)(b)(iv), the
18 entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to
19 determine the subsequent fiscal year payment.

20 (iv) The entitlement share growth rate, as described in this subsection (4), is:

21 (A) for fiscal year 2018, 1.005;

22 (B) for fiscal year 2019, 1.0187;

23 (C) for fiscal year 2020 and thereafter, determined as provided in subsection (4)(b)(ii). The rate must be
24 applied to the entitlement payment for the previous fiscal year as if the payment had been calculated using
25 entitlement share growth rates for fiscal years 2018 and 2019 as provided in subsection (4)(b)(ii).

26 (5) As used in this section, "local government" means a county, a consolidated local government, an
27 incorporated city, and an incorporated town. A local government does not include a tax increment financing
28 district provided for in subsection (8). The county or consolidated local government is responsible for making an
29 allocation from the county's or consolidated local government's share of the entitlement share pool to each special
30 district within the county or consolidated local government in a manner that reasonably reflects each special

1 district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each
2 special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

3 (6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2)
4 for local governments, the funding provided for in subsection (8) of this section, and the amounts determined
5 under 15-1-123(3) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from
6 the general fund to the department for distribution to local governments.

7 (b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year
8 and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be
9 calculated separately for:

10 (A) counties;

11 (B) consolidated local governments; and

12 (C) incorporated cities and towns.

13 (ii) In each fiscal year, the growth amount for counties must be allocated as follows:

14 (A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal
15 year entitlement share pool for all counties; and

16 (B) 50% of the growth amount must be allocated based upon the percentage that each county's
17 population bears to the state population not residing within consolidated local governments as determined by the
18 latest interim year population estimates from the Montana department of commerce as supplied by the United
19 States bureau of the census.

20 (iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as
21 follows:

22 (A) 50% of the growth amount must be allocated based upon each consolidated local government's
23 percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

24 (B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local
25 government's population bears to the state's total population residing within consolidated local governments as
26 determined by the latest interim year population estimates from the Montana department of commerce as
27 supplied by the United States bureau of the census.

28 (iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

29 (A) 50% of the growth amount must be allocated based upon each incorporated city's or town's
30 percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

1 (B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's
2 population bears to the state's total population residing within incorporated cities and towns as determined by the
3 latest interim year population estimates from the Montana department of commerce as supplied by the United
4 States bureau of the census.

5 (v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments
6 made under subsection (7) are applied is to be distributed to each local government in the same manner as the
7 entitlement share pool was distributed in the prior fiscal year.

8 (7) (a) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section,
9 the department shall determine the reimbursement amount as provided in the enactment and add the appropriate
10 amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal
11 year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool.
12 The ratio of each local government's distribution from the entitlement share pool must be recomputed to
13 determine each local government's ratio to be used in the subsequent year's distribution determination under
14 subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

15 (b) For fiscal year 2018 and thereafter, the growth rate provided for in subsection (4) does not apply to
16 the portion of the entitlement share pool attributable to the reimbursement provided for in 15-1-123(2). The
17 department shall calculate the portion of the entitlement share pool attributable to the reimbursement in
18 15-1-123(2), including the application of the growth rate in previous fiscal years, for counties, consolidated local
19 governments, and cities and, for fiscal year 2018 and thereafter, apply the growth rate for that portion of the
20 entitlement share pool as provided in 15-1-123(2).

21 (c) The growth amount resulting from the application of the growth rate in 15-1-123(2) must be allocated
22 as provided in subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A) of this section.

23 (8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(3), if a
24 tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax
25 increment financing district is not entitled to any funding. If a tax increment financing district referred to in
26 subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

27 (b) One-half of the payments provided for in this subsection (8)(b) must be made by November 30 and
28 the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment
29 financing districts is as follows:

1	Flathead	Kalispell - District 2	\$4,638
2	Flathead	Kalispell - District 3	37,231
3	Flathead	Whitefish District	148,194
4	Gallatin	Bozeman - downtown	31,158
5	Missoula	Missoula - 1-1C	225,251
6	Missoula	Missoula - 4-1C	30,009

7 (9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local
8 governments do not include revenue received from tax increment financing districts.

9 (10) When there has been an underpayment of a local government's share of the entitlement share pool,
10 the department shall distribute the difference between the underpayment and the correct amount of the
11 entitlement share. When there has been an overpayment of a local government's entitlement share, the local
12 government shall remit the overpaid amount to the department.

13 (11) A local government may appeal the department's estimation of the base component, the entitlement
14 share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform
15 dispute review procedure in 15-1-211.

16 (12) (a) Except as provided in 2-7-517, a payment required pursuant to this section may not be offset by
17 a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1.

18 (b) A payment required pursuant to this section must be withheld if a local government:

19 (i) fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and

20 (ii) fails to remit any amounts collected on behalf of the state as required by 15-1-504 ~~or any other~~
21 ~~amounts owed to the state or another taxing jurisdiction~~, as otherwise required by law, within 45 days of the end
22 of a month.

23 (c) A payment required pursuant to this section may be withheld if, for more than 90 days, a local
24 government fails to:

25 (i) file a financial report required by 15-1-504;

26 (ii) remit any amounts collected on behalf of the state as required by 15-1-504; or

27 (iii) remit any other amounts owed to the state or another taxing jurisdiction."
28

29 **NEW SECTION. Section 4. Cause of action -- failure to file reports and audits or resolve findings.**

1 (1) If a local government entity fails to file an annual financial report with the department as required by
 2 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or
 3 to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years
 4 of the applicable deadlines, a person identified in subsection (2) of this section who has received a written
 5 determination from the department under [section 5(3)(c)] or [section 5(4)(b)] may bring a cause of action against
 6 the local government entity for failure to comply with the local government entity's fiduciary requirements.

7 (2) The following parties may bring a cause of action under the provisions of subsection (1):

8 (a) any person who pays property taxes to the local government entity;

9 (b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue
 10 to the local government entity;

11 (c) any person residing within the jurisdictional boundaries of the local government entity who can
 12 demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is
 13 likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as
 14 set forth in subsection (1).

15 (3) The cause of action must be filed in the district court in the county where the local government entity
 16 is located.

17 (4) In addition to any other penalty provided by law, the court may grant relief that it considers
 18 appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local
 19 government entity, or compelling a mandatory duty required under this part that is imposed on a state or local
 20 government officer or local government entity. If a party identified in subsection (2) prevails in an action brought
 21 under this section, that party must be awarded costs and reasonable attorney fees.

22
 23 **NEW SECTION. Section 5. Filing of claims against local government entity -- disposition by**
 24 **department as prerequisite.** (1) All claims against a local government entity for failure to file an annual financial
 25 report with the department as required by 2-7-503(1), failure to complete and submit an audit or financial review
 26 to the department as required by 2-7-503(3), or failure to resolve significant audit findings or implement corrective
 27 measures as required by 2-7-515(3) within 2 years of the applicable deadlines must be presented in writing to
 28 the department.

29 (2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district
 30 court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the

1 local government entity. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled
2 until a written determination is issued under subsection (3).

3 (3) The department must review the claim and issue one of the following determinations in writing within
4 60 days after the claim is presented to the department:

5 (a) the local government entity has not violated the requirements of this part for a period of 2 years from
6 the applicable deadlines;

7 (b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years
8 from the applicable deadlines, and the department will initiate further technical assistance to help the local
9 government entity come into compliance with this part within 6 months; or

10 (c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years
11 from the applicable deadlines.

12 (4) If the department issues a written determination under subsection (3)(b), within 6 months the
13 department must provide the complainant with a final determination that either:

14 (a) the local government entity has come into compliance with the provisions of this part; or

15 (b) there is sufficient evidence of the violations of the requirements of this part.

16 (5) A complainant must receive a written determination from the department under subsection (3)(c) or
17 (4)(b) before proceeding to district court in accordance with [section 4].

18 (6) The failure of the department to issue a written determination of a claim within 60 days after the claim
19 is presented to the department must be considered a written determination under subsection (3)(c) for purposes
20 of this section.

21
22 **NEW SECTION. Section 6. Cause of action -- failure to adopt or submit an annual operating**

23 **budget.** (1) If a local government entity fails to adopt or submit an annual operating budget as required by Title
24 7, chapter 6, part 40, within 2 years of the applicable deadline, a person identified in subsection (2) of this section
25 who has received a written determination from the department under [section 7(3)(c) or 7(4)(b)] may bring a
26 cause of action against the local government entity for failure to comply with the local government entity's
27 fiduciary requirements.

28 (2) The following parties may bring a cause of action under the provisions of subsection (1):

29 (a) any person who pays property taxes to the local government entity;

30 (b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to

1 the local government entity;

2 (c) any person residing within the jurisdictional boundaries of the local government entity who can
3 demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is
4 likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as
5 set forth in subsection (1).

6 (3) The cause of action must be filed in the district court in the county where the local government entity
7 is located.

8 (4) In addition to any other penalty provided by law, the court may grant relief that it considers
9 appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local
10 government entity, or compelling a mandatory duty required under this part that is imposed on a state or local
11 government officer or local government entity. If a party identified in subsection (2) prevails in an action brought
12 under this section, that party must be awarded costs and reasonable attorney fees.

13

14 **NEW SECTION. Section 7. Filing of claims against local government entity -- disposition by**
15 **department as prerequisite.** (1) All claims against a local government entity for failure to adopt or submit an
16 annual operating budget as required by Title 7, chapter 6, part 40, within 2 years of the applicable deadline must
17 be presented in writing to the department.

18 (2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district
19 court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the
20 local government entity. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled
21 until a written determination is issued under subsection (3).

22 (3) The department must review the claim and issue one of the following determinations in writing within
23 60 days after the claim is presented to the department:

24 (a) the local government entity has not violated the requirements of this part for a period of 2 years from
25 the applicable deadlines;

26 (b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years
27 from the applicable deadlines, and the department will initiate further technical assistance to help the local
28 government entity come into compliance with this part within 6 months; or

29 (c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years
30 from the applicable deadlines.

1 (4) If the department issues a written determination under subsection (3)(b), within 6 months the
2 department must provide the complainant with a final determination that either:

3 (a) the local government entity has come into compliance with the provisions of this part; or

4 (b) there is sufficient evidence of the violations of the requirements of this part.

5 (5) A complainant must receive a written determination from the department under subsection (3)(c) or
6 (4)(b) before proceeding to district court under [section 6].

7 (6) The failure of the department to issue a written determination of a claim within 60 days after the claim
8 is presented to the department must be considered a written determination under subsection (3)(c) for purposes
9 of this section.

10
11 **NEW SECTION. Section 8. Codification instruction.** (1) [Sections 4 and 5] are intended to be codified
12 as an integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [sections
13 4 and 5].

14 (2) [Sections 6 and 7] are intended to be codified as an integral part of Title 7, chapter 6, part 40, and
15 the provisions of Title 7, chapter 6, part 40, apply to [sections 6 and 7].

16
17 **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that matured,
18 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

19
20 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
22 the part remains in effect in all valid applications that are severable from the invalid applications.

23
24 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

25
26 **NEW SECTION. Section 12. Retroactive applicability.** [This act] applies retroactively, within the
27 meaning of 1-2-109, to local government actions and duties required under [this act] occurring on or after July
28 1, 2018.

29 - END -