

SENATE BILL NO. 19

INTRODUCED BY R. WEBB

BY REQUEST OF THE LOCAL GOVERNMENT INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BUDGETING AND ACCOUNTING BY LOCAL GOVERNMENT ENTITIES; REQUIRING THE ATTORNEY GENERAL TO PERFORM INVESTIGATIONS AND BRING ACTIONS AGAINST LOCAL GOVERNMENT ENTITIES UNDER CERTAIN CIRCUMSTANCES; REVISING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION AND AUDITORS WITH RESPECT TO AUDITS; REQUIRING SPECIAL AUDITS UNDER CERTAIN CIRCUMSTANCES; REQUIRING NOTIFICATION OF THE CITY OR COUNTY ATTORNEY IF A SHORTAGE IS FOUND BY AN INDEPENDENT AUDITOR; PROVIDING AUDIT TIMELINES; REQUIRING THE STOPPAGE OF STATE FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT ENTITIES UNDER CERTAIN CIRCUMSTANCES; PROVIDING A TAXPAYER WITH AN INDEPENDENT CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT; ALLOWING A RECEIVER TO BE APPOINTED UNDER CERTAIN CIRCUMSTANCES; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO COMPEL ACTION BY A LOCAL GOVERNMENT UNDER CERTAIN CIRCUMSTANCES; IMPOSING MANDATORY DUTIES ON CERTAIN LOCAL GOVERNMENT AND STATE OFFICERS; PROVIDING PENALTIES; AMENDING SECTIONS 2-7-503, 2-7-506, 2-7-508, 2-7-511, 2-7-515, 2-7-517, AND 7-6-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Failure to promptly perform duties -- investigation -- remedy. (1) Upon notice by any person of an alleged failure or refusal of a local government entity or an officer of the entity to promptly perform a duty under this part, the attorney general shall investigate the allegation. If the attorney general determines that there is sufficient evidence of substantial or habitual violations of the requirements of this part, the attorney general shall bring an action in the district court in the county where the local government entity is located to compel compliance with the provisions of this part.

(2) In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local government

1 entity, or compelling a mandatory duty required under this part that is imposed on a state or local government
2 officer or local government entity.

3 (3) In any action brought under this section, the court shall award costs and reasonable attorney fees
4 to the attorney general.

5 (4) In addition to the remedy provided by this section, the attorney general may pursue any other civil
6 action or criminal proceeding against the local government or its officers allowed by law.

7

8 **Section 2.** Section 2-7-503, MCA, is amended to read:

9 **"2-7-503. Financial reports and audits of local government entities.** (1) (a) The governing body or
10 managing or executive officer of a local government entity, other than a school district or associated cooperative,
11 shall ensure that a financial report is made every year. A school district or associated cooperative shall comply
12 with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed
13 by the department, and be completed and submitted to the department for review within 6 months of the end of
14 the reporting period.

15 (b) The financial report of a local government that has authorized the use of tax increment financing
16 pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing
17 provision.

18 (2) The department shall prescribe a uniform reporting system for all local government entities subject
19 to financial reporting requirements, other than school districts. The superintendent of public instruction shall
20 prescribe the reporting requirements for school districts.

21 (3) (a) The governing body or managing or executive officer of each local government entity receiving
22 revenue or financial assistance in the period covered by the financial report that is in excess of \$500,000 and that
23 is also in excess of the threshold dollar amount established by the director of the office of management and
24 budget pursuant to 31 U.S.C. 7502(a)(3), regardless of the source of revenue or financial assistance, shall cause
25 an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit
26 must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be
27 completed and submitted to the department for review within 1 year from the close of the last fiscal year covered
28 by the audit.

29 (b) The governing body or managing or executive officer of a local government entity that does not meet
30 the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or,

1 in the case of a school district, if directed by the department at the request of the superintendent of public
 2 instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements
 3 of the entity for the preceding fiscal year.

4 (4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance
 5 audit of an individual financial assistance program that a local government is required to conduct under any other
 6 state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the
 7 information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency
 8 shall rely ~~upon~~ on and use that information to plan and conduct its own audits or reviews in order to avoid a
 9 duplication of effort.

10 (5) ~~In addition to the audits required by this section, the department may at any time conduct or contract~~
 11 ~~for a special audit or review of the affairs of any local government entity referred to in this part. When the audits,~~
 12 ~~financial reports, and financial reviews required by this section are not timely conducted and filed, the department~~
 13 ~~shall conduct or contract for a special audit or review of the affairs of any local government entity referred to in~~
 14 ~~this part.~~ The special audit or review must, to the extent practicable, build ~~upon~~ on audits timely performed and
 15 filed pursuant to this part.

16 (6) The fee for the special audit or review must be a charge based ~~upon~~ on the costs incurred by the
 17 department in relation to the special audit or review. The audit fee must be paid by the local government entity
 18 to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

19 (7) Failure to comply with the provisions of this section subjects the local government entity to the
 20 penalties provided in 2-7-517."

21

22 **Section 3.** Section 2-7-506, MCA, is amended to read:

23 **"2-7-506. Audit by independent auditor.** (1) The department ~~may~~ shall prepare and maintain a roster
 24 of independent auditors authorized to conduct audits of local government entities. The roster must be available
 25 to local government entities subject to the reporting requirements of 2-7-503.

26 (2) The department, in consultation with the board, shall adopt rules governing the:

27 (a) criteria for the selection of the independent auditor;

28 (b) procedures and qualifications for placing applicants on the roster;

29 (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their
 30 continuance on the roster; and

1 (d) fees payable to the department for application for placement on the roster.

2 (3) An audit made by an independent auditor must be pursuant to a contract entered into by the
3 governing body or managing or executive officer of the local government. The department must be a party to the
4 contract, and the contract may not be executed until it is signed by the department. All contracts for conducting
5 audits must be in a form prescribed or approved by the department.

6 (4) The department shall notify the local government entity of a required audit, the date the report is due,
7 and the requirement that the local government entity, the independent auditor, and the department must be
8 parties to the contract.

9 (5) If a local government entity fails to present a signed contract to the department for approval within
10 ~~90~~ 60 days of receipt of the audit notice, the department ~~may~~ shall designate an independent auditor to perform
11 the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity
12 to the department within 60 days of written notice by the department to the local government entity of the costs
13 incurred in arranging the audit. The costs must be paid in the manner of other claims against the local
14 government entity."
15

16 **Section 4.** Section 2-7-508, MCA, is amended to read:

17 **"2-7-508. Power to examine books and papers.** The independent auditor ~~may~~ shall examine ~~any~~ all
18 books, papers, accounts, and documents in the office or possession of any local government entity necessary
19 to conduct a full, complete, and fair audit in accordance with the governing standards set forth in this part."
20

21 **Section 5.** Section 2-7-511, MCA, is amended to read:

22 **"2-7-511. Access to public accounts -- suspension of officer in case of discrepancy.** (1) The
23 independent auditor ~~may~~ shall count the cash, verify the bank accounts, and verify all accounts of a public officer
24 whose accounts the independent auditor is examining under law.

25 (2) If an officer of any county, city, town, school, or other local government entity refuses to provide the
26 independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers,
27 vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor
28 shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and
29 the approximate amount of the shortage with the respective county, city, or town attorney and the governing body
30 of the local government entity.

1 (3) Upon filing of the statement, the ~~officer governing body~~ of the local government entity shall, after
 2 notice and the opportunity for a hearing, ~~be suspended~~ suspend the officer from the duties and emoluments of
 3 office and the governing body of the local government entity shall appoint a qualified person to the office pending
 4 completion of the audit.

5 (4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the
 6 accounts of the officer, the independent auditor shall notify the following entities of the shortage:

7 (a) the governing body of the local government entity of the shortage; and

8 (b) the respective county, city, or town attorney.

9 (5) If the governing body finds that a shortage exists and that the officer suspended is, by act or
 10 omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must
 11 be referred to the county attorney."
 12

13 **Section 6.** Section 2-7-515, MCA, is amended to read:

14 **"2-7-515. Actions by governing bodies.** (1) Upon receipt of the audit report, the governing bodies of
 15 each audited local government entity shall review the contents and within 30 days shall notify the department in
 16 writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report.
 17 If no deficiencies or recommendations appear in the audit report, notification is not required.

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

21 (3) ~~The~~ Within 60 days of the receipt of the audit, the local government entity shall adopt measures to
 22 correct the report findings and submit a copy of the corrective action plan to the department and, if the local
 23 government entity is a school district, shall also send a copy to the superintendent of public instruction. The
 24 department shall notify the entity of the acceptance of the corrective measures. If the department and the local
 25 government entity fail to agree, a conference between the parties must be held within 180 days of the
 26 department's decision not to accept the local government entity's corrective measures. Failure to resolve findings
 27 or implement corrective measures ~~shall~~ must result in the withholding of financial assistance in accordance with
 28 rules adopted by the department pending resolution or compliance.

29 (4) In cases where a violation of law or nonperformance of duty is found on the part of an officer,
 30 employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county,

1 city, or town attorney as provided by law. If a written request to do so is received from the department, the county,
 2 city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and
 3 nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town
 4 attorney fails or refuses to prosecute the case, the department ~~may~~ shall refer the case to the attorney general.
 5 ~~to~~ The attorney general shall prosecute the case at the expense of the local government entity."

6

7 **Section 7.** Section 2-7-517, MCA, is amended to read:

8 **"2-7-517. Penalties -- rules to establish fine -- remedies.** (1) ~~Except as provided in 15-1-121(12)(b),~~
 9 ~~when~~ When a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment
 10 required by 2-7-514(2) within 60 days, the department ~~may~~ shall issue an order stopping payment of any state
 11 financial assistance to the local government entity ~~or~~ and may charge a late payment penalty as adopted by rule.
 12 Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section
 13 must be released and paid to the local government entity.

14 (2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the
 15 audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify
 16 the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

17 (3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days
 18 of receiving a bill for an audit, the department ~~may~~ shall issue an order stopping payment of any state financial
 19 aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of
 20 failure to make payment must be released and paid to the local government entity.

21 (4) The department may grant an extension to a local government entity for filing the audits and reports
 22 required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local
 23 government entity ~~shows good cause for the delinquency or~~ demonstrates that the failure to comply with 2-7-503
 24 was the result of circumstances beyond the entity's control.

25 (5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of
 26 providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the
 27 timeframes required under that section.

28 (6) A taxpayer aggrieved by the failure of a local government entity to comply with its audit and reporting
 29 duties has an independent cause of action against the local government entity for failure to comply with the
 30 requirements of this part. The taxpayer shall bring the action in the district court in the county where the local

1 government entity is located. In addition to any other penalty provided by law, the court may grant relief that it
 2 considers appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local
 3 government entity, or compelling a mandatory duty required under this part that is imposed on a state or local
 4 government officer or local government entity. If a taxpayer prevails in an action brought under this subsection,
 5 the taxpayer must be awarded costs and reasonable attorney fees."

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7 **Section 8.** Section 7-6-611, MCA, is amended to read:

8 **"7-6-611. Role of department of administration.** (1) The department of administration shall prescribe
 9 for all local governments:

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

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

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

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

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

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

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

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

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

24 (5) To compel a local government or a local government officer to perform a mandatory duty under this
 25 chapter, the department of administration may institute an action in the district court of the first judicial district.

26 The court may grant declaratory relief or compel any mandatory duty required under this chapter. The court may
 27 award the department of administration damages, costs, and reasonable attorney fees."

28

29 **NEW SECTION. Section 9. Remedies.** A taxpayer aggrieved by the failure of a local government to
 30 comply with the budgeting and reporting duties prescribed by this chapter has an independent cause of action

1 against the local government. The taxpayer shall bring the action in the district court in the county where the local
 2 government is located. In addition to any other penalty provided by law, the court may grant relief that it considers
 3 appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local government,
 4 or compelling a mandatory duty required under this chapter that is imposed on a local government or its officers.
 5 If a taxpayer prevails in an action brought under this section, the taxpayer must be awarded costs and reasonable
 6 attorney fees.

7
 8 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as
 9 an integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [section 1].
 10 (2) [Section 9] is intended to be codified as an integral part of Title 7, chapter 6, part 40, and the
 11 provisions of Title 7, chapter 6, part 40, apply to [section 9].

12
 13 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that matured,
 14 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

15
 16 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

17
 18 **NEW SECTION. Section 13. Applicability.** [This act] applies to applies to actions occurring on or after
 19 [the effective date of this act].

20 - END -