

SENATE BILL NO. 438

INTRODUCED BY B. USHER

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE LEGISLATIVE AUDIT DIVISION TO AUDIT THE MONTANA STATE BAR ASSOCIATION; REQUIRING THE JUDICIAL BRANCH TO COVER THE COST OF THE AUDIT; AND AMENDING SECTIONS 5-13-101, 5-13-102, 5-13-304, 5-13-306, 5-13-308, 5-13-309, 5-13-313, 5-13-314, 5-13-321, 5-13-401, AND 5-13-411, MCA."

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

NEW SECTION. **Section 1. Audit of state bar of Montana.** (1) There must be a one-time

performance audit of the state bar of Montana. The performance audit must be conducted by or at the direction of the legislative auditor and may include but is not limited to:

(a) an audit creating a thorough understanding of each funding source and how the state bar of Montana is funded and where, how much money has been received from each funding source, and how each dollar from each source is spent over the past 10 years.

(b) an analysis of budgets, costs, and functions of the state bar of Montana over time.

(2) The legislative auditor shall scope and plan the audit based on risk, including a consideration of the state bar of Montana's financial, operational, and technological risks associated with meeting its intended purpose, goals, objectives, and legal mandates. The legislative auditor shall consider all of the responsibilities and goals and objectives of the state bar of Montana as part of its scoping and selection process.

(3) The objectives of this audit must be formulated, defined, and conducted in accordance with industry standards established for auditing as described in 5-13-308.

(4) The cost of the audit in whole must be paid for by the judicial branch.

(5) The audit must be completed by and presented to the legislative audit committee no later than December 15, 2024. Following review by the legislative audit committee, the audit and any audit followup must be delivered to members of the law and justice interim committee and the section D interim budget subcommittee who shall serve in the 69th legislature and be posted on the website of the legislative audit

1 division.

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3 **Section 2.** Section 5-13-101, MCA, is amended to read:

4 **"5-13-101. Title and purpose of chapter.** (1) This chapter may be cited as "The Legislative Audit
5 Act".

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

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14 **Section 3.** Section 5-13-102, MCA, is amended to read:

15 **"5-13-102. Definitions.** In this chapter:

16 (1) "committee" means the legislative audit committee;

17 (2) "state agency" means all offices, departments, boards, commissions, institutions, universities,
18 colleges, and any other person or any other administrative unit of state government that spends or encumbers
19 public moneys by virtue of an appropriation from the legislature or that handles money on behalf of the state or
20 that holds any trust or agency moneys from any source; and

21 (3) "state bar of Montana" means the private, independent association of individuals who practice
22 law in the state."

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24 **Section 4.** Section 5-13-304, MCA, is amended to read:

25 **"5-13-304. Powers and duties.** The legislative auditor shall:

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

28 (2) conduct an audit to meet the standards and accomplish the objectives required in 5-13-308

1 whenever the legislative auditor determines it necessary and shall advise the members of the legislative audit
2 committee;

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

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

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

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

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

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

20 (9) have the authority to audit records of the state bar of Montana to determine whether the
21 supreme court exercises appropriate supervision over the state bar's role in maintaining and improving the
22 administration of justice."

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24 **Section 5.** Section 5-13-306, MCA, is amended to read:

25 **"5-13-306. Legislative auditor to assist legislature during sessions.** During sessions of the
26 legislature, the legislative auditor and the audit staff, when requested, shall assist the legislature, its
27 committees, and its members by gathering and analyzing information relating to the fiscal affairs of state
28 government and the state bar of Montana."

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2 **Section 6.** Section 5-13-308, MCA, is amended to read:

3 **"5-13-308. Audit standards and objectives.** The objectives of financial compliance, performance,
4 and information system audits of state agencies or their programs and the state bar of Montana conducted by
5 the legislative auditor are formulated, defined, and conducted in accordance with industry standards
6 established for auditing to determine whether:

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

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

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

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

15 (5) reports and financial statements by the agency to the governor, the legislature, and central
16 control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for
17 evaluating the agency's operations."

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19 **Section 7.** Section 5-13-309, MCA, is amended to read:

20 **"5-13-309. Information from state agencies and state bar of Montana.** (1) All state agencies and
21 the state bar of Montana shall aid and assist the legislative auditor in the auditing of books, accounts, activities,
22 and records.

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

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

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Section 8. Section 5-13-313, MCA, is amended to read:

"5-13-313. Audit selection based on risk. (1) In selecting and prioritizing the state agencies or programs or the state bar of Montana 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~~ the intended purpose, goals, objectives, and legal mandates of the agency, program, or state bar.

(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."

Section 9. Section 5-13-314, MCA, is amended to read:

"5-13-314. Employment protection. An employee of the state of Montana, an employee of the state bar 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 has violated state law."

Section 10. Section 5-13-321, MCA, is amended to read:

"5-13-321. Joint audits. (1) The legislative auditor may participate with audit oversight organizations on joint audits of Montana programs or services or the state bar of Montana. For the purpose of the joint audits, the legislative auditor may cooperate with the 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.

1 Audits authorized by this section may examine all or any part of the financing or performance of a program,
 2 whether operated directly by a state agency, ~~or by a contractor with a state agency,~~ or by the state bar. Joint
 3 audits are subject to the audit standards, objectives, and reporting procedures required by state law and as
 4 required in applicable federal laws, regulations, and policies.

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

10 (b) Costs of the legislative auditor for conducting joint audits on the state bar of Montana are
 11 considered costs of the legislative audit division.

12 (3) Audits conducted pursuant to this section must be approved by the committee as part of the
 13 operational plan of the legislative auditor."
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15 **Section 11.** Section 5-13-401, MCA, is amended to read:

16 **"5-13-401. Definitions.** As used in this part, the following definitions apply:

17 (1) "Agency" means each state office, department, division, board, commission, council,
 18 committee, institution, university system unit, or other entity or instrumentality of the executive branch, office of
 19 the judicial branch, or office of the legislative branch of state government.

20 (2) "Audit services" means financial compliance post audits as required by this chapter.

21 ~~(3)~~ "State bar of Montana" has the same meaning provided in 5-13-102.

22 ~~(3)(4)~~ "University system unit" means the board of regents or its units."
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24 **Section 12.** Section 5-13-411, MCA, is amended to read:

25 **"5-13-411. Legislative auditor to approve contracts for audit services.** No contract for an audit of
 26 a state agency or the state bar of Montana may be entered into without the approval of the legislative auditor."
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