



Montana Legislative Services Division
Legal Services Office

To: Members of the Local Government Interim Committee
From: Julie Johnson, Staff Attorney
Re: Senate Bill 302 Application
Date: January 20, 2022

I. INTRODUCTION

In 2019, the Legislature passed Senate Bill 302 (SB 302), which created a cause of action against a local government entity for failing to file annual financial reports and audits or resolve audit findings. The law requires that before a person files a cause of action against a local government entity in District Court, the person must first present a complaint to the Department of Administration (the Department). The Department must address the complaint and issue a written determination in order for the person to proceed to District Court.

At the November 2021 meeting of the Local Government Interim Committee, the Department provided information that a complaint had been presented to the agency and that it was in the process of determining the next step. I was asked to analyze whether SB 302 provided clear direction to the Department to determine the next step and its deadline. I believe that the law is sufficiently clear and that the Department will need to issue a written determination to those who presented the complaint by March 23, 2022. My reasoning and the facts on which I base my conclusion are set forth below.

II. LAW

Section 2-7-523(1), MCA, provides that a person may bring a cause of action against a local government entity if the local government entity fails to:

- file an annual financial report with the department of administration;
- complete and submit an audit or financial review to the department; or
- resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines.

Subsection (2) of 2-7-523, MCA, allows the following parties to bring a cause of action under the provisions of subsection (1):

- any person who pays property taxes to the local government entity;
- any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to the local government entity; or
- any person residing within the jurisdictional boundaries of the local government entity who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as set

forth in subsection (1).

As mentioned in the Introduction, 2-7-524(2), MCA, requires a person to file a claim with the Department of Administration first before proceeding to District Court.

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

Subsection (3) of 2-7-524, MCA, provides that after a complaint is made, the Department must review the claim and issue a determination in writing within 60 days of receiving the claim.¹ The determination must be one of the following:

- that the local government entity has *not violated the requirements* of this part for a period of 2 years from the applicable deadlines;
- that there is *sufficient evidence of the violations* of the requirements of this part for a period of 2 years from the applicable deadlines, *and the department will initiate further technical assistance* to help the local government entity come into compliance with this part within 6 months; or
- that there is *sufficient evidence of the violations of the requirements* of this part for a period of 2 years from the applicable deadlines.

If the Department issues a written determination that there is sufficient evidence of the violations and that the Department will initiate further technical assistance to help the local government entity come into compliance with this part within 6 months, then within 6 months the Department must provide the complainant with a final determination that either:

- the local government entity has come into compliance with the provisions of this part; or
- there is sufficient evidence of the violations of the requirements of this part.

If the Department does not issue a written determination of a claim within 60 days after the claim is presented to it, the failure to issue a determination is considered a written determination that there is *sufficient evidence of the violations of the requirements* of this part for a period of 2 years from the applicable deadlines. A complainant must receive a written determination from the Department that there is sufficient evidence of the violations before proceeding to District Court.

¹ The remainder of this section is citing to § 2-7-524, MCA.

III. FACTUAL BACKGROUND

In this case, a group of taxpayers of a local government made a complaint pursuant to 2-7-523, MCA, to the Department of Administration on August 27, 2020. On October 30, 2020, the Department responded to the complaint, in which it informed the group that the 2-year time requirement had not expired and therefore a determination could not be made on the alleged violations.

Subsequently, on July 23, 2021, the same group of taxpayers presented another complaint to the Department. On September 22, 2021, the Department responded that it was initiating further technical assistance to help the local government come into compliance within 6 months, by March 22, 2022.

IV. ANALYSIS AND CONCLUSION

In this case, on September 22, 2021, the Department issued a written determination that there is sufficient evidence of the violations and that it would initiate further technical assistance to help the local government entity come into compliance with this part within 6 months. This 6-month deadline expires on March 22, 2022. Following the expiration of the 6-month period, the Department must provide the taxpayer group with a written determination that either:

- the local government entity has come into compliance with the provisions of this part; or
- there is sufficient evidence of the violations of the requirements of this part.

Therefore, by March 23, 2022, the Department must provide the group of taxpayers with its determination. If the determination is that there is sufficient evidence of the violations, the taxpayer group may proceed to District Court and file a claim against the local government.

Claims for Noncompliance Timeline

- 8/27/2020, 1st Claim received from the Attorney on behalf of entity taxpayers
- 10/30/2020, DOA responded to 1st Claim, stating the 2-year time requirement had not yet been met and therefore a determination could not be made on the alleged violations
- 7/23/2021, 2nd Claim received from the Attorney on behalf of entity taxpayers
- 9/22/2021, DOA responded to 2nd Claim, initiating further technical assistance to help the entity come into compliance within 6 months, ending March 22, 2022
- 10/5/2021, DOA sent A 6-month technical assistance plan to the entity
 - The expectation was that the entity would sign the plan and send back by 10/8/2021, but we have not received to date
- 10/12/2021, DOA followed up with the entity, to ensure receipt and inquire on when the entity would submit a signed plan since the original deadline lapsed

Received from Department of
Administration by email 12/16/2021