

HOUSE BILL NO. 262

INTRODUCED BY J. SCHILLINGER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT FINANCIAL REPORTING AND AUDIT REQUIREMENTS; ~~ALLOWING A LOCAL GOVERNMENT ENTITY COLLECTING LESS THAN THE THRESHOLD AMOUNT TO FILE A LIMITED FINANCIAL REPORT OR SUBMIT A CURRENT AUDIT;~~ ~~ALLOWING CERTAIN LOCAL GOVERNMENT ENTITIES TO SUBMIT TO A FINANCIAL REVIEW;~~ ~~REQUIRING THE DEPARTMENT OF ADMINISTRATION TO FUND A PORTION OF LOCAL GOVERNMENT AUDIT COSTS; ALLOWING FOR AN ALTERNATIVE FINANCIAL REPORT FOR LOCAL GOVERNMENTS WITH A POPULATION UNDER 10,000;~~ REMOVING THE REQUIREMENT TO WITHHOLD STATE FINANCIAL AID TO LOCAL GOVERNMENT ENTITIES WHO FAIL TO REMIT AUDIT FEES; ~~PROVIDING THAT ADVERSE OPINIONS OR DISCLAIMERS RATHER THAN SIGNIFICANT FINDINGS IN AUDIT REPORTS TRIGGER ADDITIONAL MEASURES;~~ EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-7-503, ~~2-7-505, 2-7-506, 2-7-513, 2-7-514, 2-7-515, 2-7-516,~~ AND 2-7-517, 2-7-521, 2-7-523, 2-7-524, AND 7-6-4003, MCA."

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

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Financial reports and audits of local government entities. (1) (a) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213.

(i) _____ The financial report must cover the preceding fiscal year and be in a form prescribed by the department or be in an alternative form acceptable to the department as provided in subsection (1)(a)(ii). ~~be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.~~ The completed report must be submitted to the department for review within 6 months of the end of the reporting period. The department may grant a 3-month extension for the

submittal of an audit in lieu of a financial report.

(ii) An alternative format of a financial report acceptable to the department may be used by local government entities with a population of 10,000 or less as reported in the most recent decennial survey issued by the United States census bureau and that meets the requirements outlined in department ruleA local government entity shall submit a financial report that is limited to a statement of revenues, expenditures, and net income or loss on a cash basis compiled in a summary of the revenues and expenditures by applicable fund, except when external requirements mandate that financial statements be presented on the basis of generally accepted accounting principles or the governing body determines it is in the best interest of the entity to present on the basis of generally accepted accounting principles.

(iii) If a local government entity is undergoing an audit as required in this part, the audit may be submitted in lieu of a financial report. The audit must be submitted within 1 year of the end of the reporting period.

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

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The department shall be responsible for funding and implementing a mandatory reporting system that must be compatible with the reporting capabilities of each local government entity required to submit a report. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

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

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) ~~and that does not have an adverse opinion or a disclaimer in its most recent audit~~ shall:

(i) ~~_____ at least once every 4-5 4 years, if directed by the department, or, submit to an audit in accordance with generally accepted accounting procedures; or~~

(ii) ~~_____ at least once every 4 years if directed by the department, or,~~ in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

~~(c) _____ A governing body or managing or executive officer of a local government entity that does not currently meet the criteria for an audit required in this part and does not have an adverse opinion or a disclaimer in its most recent audit may elect to perform a financial review with agreed on procedures in lieu of an audit. The department shall consult local government representatives, independent auditors, and a taxpayers association in the creation of appropriate procedures for a local government financial review.~~

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

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

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

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

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2 **Section 2.** ~~Section 2-7-505, MCA, is amended to read:~~

3 **"2-7-505. Audit scope and standards.** ~~(1) Each required audit must be a comprehensive audit of the~~
4 ~~affairs of the local government entity and must be made in accordance with auditing standards and in~~
5 ~~accordance with federal regulations adopted by the department by rule.~~

6 ~~(2) The department, with cooperation from state agencies, shall prepare a local government~~
7 ~~compliance supplement that contains state and federal regulations applicable to local government entities.~~
8 ~~Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government~~
9 ~~auditing standards adopted by the department to determine the compliance testing to be performed during an~~
10 ~~audit.~~

11 ~~(3) When auditing a county or a consolidated government, auditors shall perform tests for~~
12 ~~compliance with state laws relating to receipts and disbursements of custodial funds maintained by the entity.~~
13 ~~Findings related to compliance tests must be reported in accordance with the reporting standards for financial~~
14 ~~audits prescribed in government auditing standards adopted by the department."~~

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

17 **"2-7-506. Audit by independent auditor.** ~~(1) The department may prepare and maintain a roster of~~
18 ~~independent auditors authorized to conduct audits of local government entities. The roster must be available to~~
19 ~~local government entities subject to the reporting requirements of 2-7-503.~~

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

21 ~~(a) criteria for the selection of the independent auditor;~~

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

23 ~~(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their~~
24 ~~continuance on the roster; and~~

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

26 ~~(3) An audit made by an independent auditor must be pursuant to a contract entered into by the~~
27 ~~governing body or managing or executive officer of the local government. The department must be a party to~~
28 ~~the contract and shall pay one-half of the total audit costs. The contract may not be executed until it is~~

signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

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

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

Section 4. Section 2-7-513, MCA, is amended to read:

"2-7-513. Content of audit report and financial report. (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule. The department, in consultation with local government representatives, independent auditors, and a taxpayers association, shall determine the final scope and reporting requirements for acceptable financial reviews. Generally accepted accounting principles as issued by the governmental accounting standards board may inform but do not control financial review standards for local government entities.

(2) (a) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report;

(i) must be submitted in a form required by the department;

(ii) must be limited to a statement of revenues, expenditures, and net income or loss on a cash basis compiled in a summary of revenues and expenditures by applicable fund, except when external requirements mandate that financial statements be presented on the basis of generally accepted accounting principles or the governing body determines it is in the best interest of the entity to present on the basis of generally accepted accounting principles; and

(iii) may be substituted by an audit report as provided in 2-7-503(3).

(b) The superintendent of public instruction shall prescribe the general methods and details of

accounting for financial reports for schools."

Section 5. Section 2-7-514, MCA, is amended to read:

"2-7-514. Filing of audit report and financial report. (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts, except that a local government meeting the requirements of 2-7-503(3)(b) shall pay only the administrative fee set by the department in rule.

(3)(2) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours."

Section 6. 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 submit to the department a corrective action plan detailing what action or actions they plan to take on any findings or recommendations contained in the audit report. If no 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 must include a statement by the governing bodies that noted findings or recommendations for improvement have been acted on by adoption as recommended, adoption with modification, or rejection.

~~(3) Within 30 days of receipt of the corrective action plan, the department shall notify the entity of the acceptance or rejection of the corrective measures. If the department and the local government entity fail to agree on the corrective measures, a conference between the parties must be held within 30 days of the department's decision not to accept the local government entity's corrective measures. Failure to resolve significant findings an adverse opinion or a disclaimer or implement corrective measures must result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.~~

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

Section 7. Section 2-7-516, MCA, is amended to read:

~~**"2-7-516. Audit fees.** (1) The compensation to the independent auditor for conducting an audit must be agreed upon on by the governing body or managing or executive officer of the local government entity, the department, and the independent auditor and must be paid in the manner that other claims against the local government entity and the department are paid.~~

~~(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department."~~

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

"2-7-517. Penalties -- rules to establish fine. (1) Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) ~~or to make the payment required by 2-7-514(2)~~ or make payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment

penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

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

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

~~(4)~~(3) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

~~(5)~~(4) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section."

Section 9. Section 2-7-521, MCA, is amended to read:

~~"2-7-521. Publication. (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.~~

~~(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.~~

~~(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish~~

only:

~~(a) the summary of significant findings provided for in subsection (1)(b); and~~

~~(b) a statement to the effect that the audit report is on file in its entirety and open to public~~

~~inspection.~~

~~(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.~~

~~(4) Publication costs must be borne by the audited local government entity."~~

Section 10. Section 2-7-523, MCA, is amended to read:

~~"2-7-523. Cause of action — failure to file reports and audits or resolve findings.~~ (1) If a local government entity fails to file an annual financial report with the department as required by 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or to resolve significant audit findings an adverse opinion or a disclaimer or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines, a person identified in subsection (2) of this section who has received a written determination from the department under 2-7-524(3)(c) or (4)(b) may bring a cause of action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

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

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

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

~~(c) 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).~~

~~(3) The cause of action must be filed in the district court in the county where the local government~~

entity is located.

(4) 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 financial receiver for the local government entity, or compelling a mandatory duty required under this part that is imposed on a state or local government officer or local government entity. If a party identified in subsection (2) prevails in an action brought under this section, that party must be awarded costs and reasonable attorney fees."

Section 11. Section 2-7-524, MCA, is amended to read:

"2-7-524. Filing of claims against local government entity disposition by department as prerequisite. (1) All claims against a local government entity for failure to file an annual financial report with the department as required by 2-7-503(1), failure to complete and submit an audit or financial review to the department as required by 2-7-503(3), or failure to resolve significant audit findings an adverse opinion or a disclaimer or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines must be presented in writing to the department.

(2) A complaint based on a claim subject to the provisions of subsection (1) 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).

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

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

(b) 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

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

(4) If the department issues a written determination under subsection (3)(b), within 6 months the

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department must ~~shall~~ provide the complainant with a final determination that either:

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

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

(5) ~~A complainant must receive a written determination from the department under subsection (3)(c) or (4)(b) before proceeding to district court in accordance with 2-7-523.~~

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

Section 12. Section 7-6-4003, MCA, is amended to read:

~~"7-6-4003. Budget and levies supplied to department of administration.~~ (1) ~~A local government shall submit a complete copy of the final budget together with a statement of tax levies to the department of administration by the later of October 1 or 60 days after receipt of taxable values from the department of revenue. The county clerk and recorder shall make this submission for counties.~~

(2) ~~The local government shall use standard forms prescribed by the department of administration or may use an alternative budget format acceptable to the department of administration."~~

- END -