

HOUSE BILL NO. 548

INTRODUCED BY MARKS, BARDANOUVE, RAMIREZ, DONALDSON,
BENGTSON, PECK, WINSLOW, AKLESTAD, STEPHENS, E. SMITH,
GOODOVER, VAN VALKENBURG, HAFLEY, MCCALLUM

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

IN THE HOUSE

January 28, 1983	Introduced and referred to Committee on Appropriations.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted.
February 22, 1983	Bill printed and placed on members' desks. Second reading, do pass.
February 23, 1983	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Finance and Claims.
March 16, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 18, 1983	Second reading, concurred in.
March 21, 1983	Third reading, concurred in. Ayes, 44; Noes, 4.

IN THE HOUSE

March 21, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *548*
 2 INTRODUCED BY *W. B. Baudens, R. R. Rasmus*
Donaldson, Bangston, Jack, E. E. E.
 3 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE
AKLESTAD, STEPHENS, E. Smith, Goodson
 4 *Van der Kerk, Haffay, George, McCallister*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
 6 EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
 7 AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
 8 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Definitions. As used in
 12 [sections 1 through 5], the following definitions apply:

13 (1) "Additional services" means different services or
 14 more of the same services.

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

21 (3) "Approving authority" means the governor or his
 22 designated representative for executive branch agencies; the
 23 chief justice of the supreme court for judicial branch
 24 agencies; appropriate legislative committees for legislative
 25 branch agencies; or the board of regents for the university

1 system.

2 (4) "Budget amendment" means a legislative
 3 appropriation to increase spending authority for the special
 4 revenue or proprietary funds contingent on total compliance
 5 with all budget amendment procedures.

6 (5) "Emergency" means any catastrophe, disaster,
 7 calamity, or other equally serious unforeseen and
 8 unanticipated circumstance that has occurred subsequent to
 9 the time an agency's appropriation was made, which was
 10 clearly not within the contemplation of the legislature and
 11 the governor, and which seriously affects one or more
 12 functions of a state agency and the agency's expenditure
 13 requirements for the performance of the function or
 14 functions.

15 (6) "Executive branch approving authority" means the
 16 governor or his designated representative.

17 (7) "Necessary" means essential to the public welfare
 18 and of a nature which cannot wait until the next legislative
 19 session for legislative consideration.

20 (8) "Proposed to and rejected by the legislature"
 21 means a proposal known to the requesting agency, the office
 22 of budget and program planning, the office of the
 23 legislative fiscal analyst, or the approving authority that
 24 was:

25 (a) made in a bill which was killed;

(b) amended out of a bill prior to final defeat or enactment; or

(c) made to and rejected by any legislative committee or subcommittee.

(9) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(10) "Special revenue funds" means accounting entities designated with the beginning numbers of 02 and 03 as determined in the treasury fund accounting entity matrix dated December 21, 1982, utilized in the executive budget, 1984-85. Accounting entities beginning with the number 02 are designated "state special revenue or earmarked" entities. Accounting entities beginning with the number 03 are designated "other special revenue" entities.

(11) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

NEW SECTION. Section 2. Budget amendment requirements. (1) No budget amendment may be approved:

(a) by the approving authority, except a budget amendment to spend funds which were not available for legislative consideration;

(b) by the approving authority, which contains any ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state earmarked revenue fund unless an emergency justifies such expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for additional services which have been proposed to and rejected by the legislature during or since the most recent regular legislative session;

(f) by the approving authority, for any matter of which the requesting agency had knowledge or reasonably should have had knowledge at a time when the proposal could have been presented to the most recent legislative session open to that matter; or

(g) to extend beyond June 30 of the last year of any biennium. All budget amendments shall itemize planned expenditures by fiscal year.

(2) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

NEW SECTION. Section 3. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other alternative available to provide the additional services. Such certification shall specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing personnel because of the present required workload of existing personnel, or that the agency is unable within its existing funding to fund all or part of such additional services from any source lawfully available to it.

(d) the additional proposed services have not been proposed to and rejected by the legislature during or since the most recent regular legislative session; and

(e) the budget amendment makes no ascertainable present or future commitment for increased general fund support.

(2) The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific follow up date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state earmarked revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

NEW SECTION. Section 4. Executive branch budget amendment procedures. (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the

1 entire budget amendment to the legislative fiscal analyst.

2 (2) If the executive branch approving authority denies
3 the request for a budget amendment, he shall immediately
4 forward a notice of denial to the legislative fiscal
5 analyst.

6 (3) If the executive branch approving authority
7 intends to make certification of the budget amendment,
8 immediately upon his completion of the certification he
9 shall forward the certification and all supporting
10 documentation to the legislative fiscal analyst. The
11 executive branch approving authority may not approve the
12 budget amendment until he receives the legislative finance
13 committee's written report for that budget amendment unless:

14 (a) the report is not received within 90 calendar days
15 from the date the certification and supporting documentation
16 were forwarded to the finance committee, in which case the
17 approving authority may approve the budget amendment; or

18 (b) there has been a waiver of review and report as
19 provided in subsection (6).

20 (4) The legislative fiscal analyst shall review each
21 proposed budget amendment that has been certified by the
22 executive branch approving authority for compliance with
23 statutory budget amendment requirements and standards and
24 shall present a written report of this review to the
25 legislative finance committee. Within 10 days after the

1 meeting of the legislative finance committee that considered
2 the budget amendment, the legislative fiscal analyst shall
3 submit the committee's report to the executive branch
4 approving authority.

5 (5) Upon receipt of the legislative finance
6 committee's written report, the executive branch approving
7 authority may approve or deny the budget amendment or may
8 return the budget amendment to the requesting agency for
9 further information. If the executive branch approving
10 authority has returned the budget amendment to the
11 requesting agency and the requesting agency resubmits the
12 budget amendment to the executive branch approving
13 authority, all procedures set out in this section apply to
14 the resubmitted budget amendment.

15 (6) If an emergency occurs that poses a serious threat
16 to the life, health, or safety of the public, the
17 legislative fiscal analyst may waive his written review and
18 the legislative finance committee's written report required
19 by this section. Upon receipt of such waiver, the executive
20 branch approving authority may approve the budget amendment
21 on completion of his certification. Such a waiver, however,
22 affects only the legislative fiscal analyst's written review
23 and the legislative finance committee's written report on
24 the budget amendment, and all other budget amendment
25 requirements and standards remain in effect. After such a

1 waiver, the legislative fiscal analyst may complete the
2 written review.

3 (7) Nothing in [sections 1 through 5] confers any
4 authority on the legislative finance committee to approve or
5 deny budget amendments.

6 NEW SECTION. Section 5. Voidness of improperly
7 certified budget amendments. Any budget amendment that is
8 not certified by the approving authority according to the
9 standards and procedures set out in [sections 1 through 5]
10 may be declared void in its entirety by a court of competent
11 jurisdiction on complaint of the attorney general, the
12 legislature, or the legislative finance committee. No funds
13 may be expended under an improperly certified budget
14 amendment.

15 Section 6. Section 5-12-401, MCA, is amended to read:

16 "5-12-401. Submission of budget amendments to
17 committee. All budget amendments for state agencies must be
18 submitted through the budget director to the legislative
19 finance committee as soon as received by the budget
20 director. No state agency shall expend in excess of the its
21 legislative appropriation ~~except under authority of, which~~
22 includes a lawfully approved and valid budget amendment."

23 Section 7. Section 5-12-402, MCA, is amended to read:

24 "5-12-402. Review by legislative fiscal analyst. The
25 legislative fiscal analyst shall review proposed or approved

1 budget amendments ~~submitted to the committee from the budget~~
2 ~~director and shall~~ make recommendations to the committee
3 concerning proposed or approved budget amendments."

4 Section 8. Section 17-8-103, MCA, is amended to read:

5 "17-8-103. Expenditures in excess of appropriation
6 unlawful. (1) It shall be unlawful for the board of
7 trustees, executive board, managerial staff, president,
8 deans and faculty, or any other authority of any state
9 institution maintained in whole or in part by the state or
10 any officer, department, board, commission, or bureau,
11 having charge of the disbursement or expenditure of the
12 income provided by legislative appropriation or otherwise,
13 to expend, contract for the expenditure, or to incur or
14 permit the incurring of any obligation whatsoever, in any
15 one year, in excess of the legislative appropriation ~~or~~
16 including any approved, authorized, and valid budget
17 amendment, provided for such year or for any supervisory
18 board or authority either directly or indirectly to
19 authorize, direct, or order any such institution, officer,
20 department, board, commission, or bureau to increase any
21 expenditures, except as specifically provided by law.

22 (2) It shall be and is hereby made the duty of any and
23 all of such institutions, officers, departments, boards,
24 commissions, and bureaus to keep such expenditures,
25 obligations, and liabilities within the amount of such

1 legislative appropriation or, ~~which includes an approved,~~
2 ~~authorized, and valid~~ budget amendment."

3 Section 9. Section 17-8-104, MCA, is amended to read:

4 "17-8-104. ~~Penalty civil and criminal penalties and~~
5 ~~remedies~~ for violation. (1) (a) Any authority or member of
6 a board of trustees or any person, officer, or employee
7 violating the provisions of 17-8-103 shall be guilty of a
8 misdemeanor and upon conviction thereof shall be punished by
9 a fine of not less than \$50 or more than \$500 or ~~imprisoned~~
10 ~~by imprisonment~~ in the county jail for not less than 30 days
11 or more than 6 months or by both such fine and
12 imprisonment.

13 ~~(b) Any authority or member of a board of trustees or~~
14 ~~any person, officer, or employee violating the provisions of~~
15 ~~17-8-103 is and in addition thereto, said authority, member,~~
16 ~~person, officer, or employee shall be personally liable and~~
17 ~~the surety or sureties on his bond shall also be liable to~~
18 ~~the state for the amount of the excess thus unlawfully~~
19 ~~expended, upon complaint of the attorney general, of the~~
20 ~~legislature by joint resolution, of a standing committee of~~
21 ~~the legislature, or of any taxpayer filed in a district~~
22 ~~court of this state.~~

23 ~~(c) Any authority or member of a board of trustees or~~
24 ~~any person, officer, or employee violating the provisions of~~
25 ~~17-8-103 is and said authority, member, person, or officer~~

1 ~~shall be~~ guilty of misfeasance in office, and ~~such employee~~
2 shall be guilty of wrongdoing, and each shall be subject to
3 removal from office or from such employment, upon complaint
4 of the attorney general, ~~the legislature by joint~~
5 ~~resolution, a standing committee of the legislature, or of~~
6 any taxpayer, filed in a district court of this state and
7 ~~upon proof of violation of 17-8-103, in accordance with law.~~

8 ~~(2) Complaints under subsections (1)(b) and (1)(c) may~~
9 ~~be combined in a single action.~~

10 ~~(3) Remedies and penalties provided by this section~~
11 ~~may be pursued singly or in any combination."~~

12 NEW SECTION. Section 10. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 11. Effective date. This act is
19 effective July 1, 1983.

-End-

Approved by Comm.
on Appropriations

HOUSE BILL NO. 548

INTRODUCED BY MARKS, BARDANOUVE,

RAMIREZ, DONALDSON, BENGTSON, PECK, WINSLOW,

AKLESTAD, STEPHENS, E. SMITH, GOODOVER,

VAN VALKENBURG, HAFEEY, MCCALLUM

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~NEW SECTION.~~ Section 1. Definitions. As used in
[sections 1 through 5], the following definitions apply:

(1) "Additional services" means different services or
more of the same services.

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

(3) "Approving authority" means the governor or his
designated representative for executive branch agencies; the

chief justice of the supreme court for judicial branch
agencies; appropriate legislative committees for legislative
branch agencies; or the board of regents for the university
system.

(4) "Budget amendment" means a legislative
appropriation to increase spending authority for the special
revenue or ~~FUND~~, proprietary funds, ~~OR UNRESTRICTED SUBFUND~~
contingent on total compliance with all budget amendment
procedures.

(5) "Emergency" means any catastrophe, disaster,
calamity, or other ~~equally~~ serious unforeseen and
unanticipated circumstance that has occurred subsequent to
the time an agency's appropriation was made, which was
clearly not within the contemplation of the legislature and
the governor, and which seriously affects one or more
functions of a state agency and the agency's expenditure
requirements for the performance of the function or
functions.

(6) "Executive branch approving authority" means the
governor or his designated representative.

(7) "Necessary" means essential to the public welfare
and of a nature which cannot wait until the next legislative
session for legislative consideration.

~~(8) "Proposed--to--and--rejected--by--the--legislature"~~
~~means-a-proposal-known-to-the-requesting-agency--the--office~~

1 of---budget---and---program---planning---the---office---of---the
2 legislative-fiscal-analyst-or-the-approving-authority---that
3 was:

4 (a)---made-in-a-bill-which-was-killed;

5 (b)---amended-out-of-a-bill-prior-to-final-defeat-or
6 enactment; or

7 (c)---made-to-and-rejected-by-any-legislative-committee
8 or-subcommittee;

9 (f)(1) "Requesting agency" means the agency of state
10 government that has requested a specific budget amendment.

11 (f)(2) "Special-revenue-funds" means accounting entities
12 designated-with-the-beginning-numbers-of--02--and--03--as
13 determined-in-the-treasury-fund-accounting---entity---matrix
14 dated--December--21--1982--utilized-in-the-executive-budget
15 1984-85--Accounting-entities-beginning-with-the-number--02
16 are---designated---"state---special-revenue--or--earmarked"
17 entities--Accounting-entities-beginning-with-the-number--03
18 are-designated--"other-special-revenue" entities.

19 (f)(3) "University system unit" means the board of
20 regents, office of the commissioner of higher education,
21 university of Montana at Missoula, Montana state university,
22 at Bozeman, Montana college of mineral science and
23 technology at Butte, eastern Montana college at Billings,
24 northern Montana college at Havre, western Montana college
25 at Dillon, the agricultural experiment station with central

1 offices at Bozeman, the forestry and conservation experiment
2 station with central offices at Missoula, the cooperative
3 extension service with central offices at Bozeman, or the
4 bureau of mines and geology with central offices at Butte.

5 ~~NEW SECTION.~~ Section 2. Budget amendment
6 requirements. (1) No budget amendment may be approved:

7 (a) by the approving authority, except a budget
8 amendment to spend funds which were not available for
9 legislative consideration;

10 (b) by the approving authority, which contains any
11 ascertainable commitment for any present or future increased
12 general fund support;

13 (c) by the approving authority, for the expenditure of
14 money in the state earmarked revenue fund unless an
15 emergency justifies such expenditure;

16 (d) by the approving authority, unless it will provide
17 additional services;

18 (e)---by---the---approving---authority---for---additional
19 services---which---have---been---proposed-to-and-rejected-by-the
20 legislature---during---or---since---the---most---recent---regular
21 legislative-session.

22 (f)(1) by the approving authority, for any matter of
23 which the requesting agency had knowledge or reasonably
24 should have had knowledge at a time when the proposal could
25 have been presented to the most recent legislative session

1 open to that matter; or

2 ~~(g)(1)(E)~~ to extend beyond June 30 of the last year of
3 any biennium. All budget amendments shall itemize planned
4 expenditures by fiscal year.

5 (2) Each budget amendment must be submitted by the
6 approving authority to the budget director and the office of
7 the legislative fiscal analyst.

8 ~~NEW SECTION.~~ Section 3. Budget amendment
9 certification. In approving a budget amendment, the
10 approving authority shall make the following certifications
11 and in addition shall provide all other REASONABLE
12 information required below as an integral part of the
13 certification:

14 (1) The approving authority shall certify that:

15 (a) specific additional services will be provided as a
16 result of the expenditures to be permitted under this budget
17 amendment and shall also list each specific service to be so
18 provided;

19 (b) the specific services to be provided under this
20 budget amendment are necessary;

21 (c) the agency requesting this budget amendment has no
22 other alternative available to provide the additional
23 services. Such certification shall specifically include
24 determinations by the approving authority that the agency
25 cannot provide all or specific parts or amounts of the

1 additional services with existing personnel because of the
2 present required workload of existing personnel, or that the
3 agency is unable within its existing funding to fund all or
4 part of such additional services from any source lawfully
5 available to it.

6 ~~(d) the additional proposed services have not been~~
7 ~~proposed to and rejected by the legislature during or since~~
8 ~~the most recent regular legislative session; and~~

9 ~~(e)(1)~~ the budget amendment makes no ascertainable
10 present or future commitment for increased general fund
11 support.

12 (2) The approving authority shall include in its
13 certification the specific criteria by which the
14 effectiveness of the additional services will be evaluated
15 and shall state a specific follow up date on which the
16 written evaluation of such services, using the listed
17 criteria, will be presented to the legislative fiscal
18 analyst. The written evaluation must be presented to the
19 legislative fiscal analyst on or before that date.

20 (3) For budget amendments to spend money in the state
21 earmarked revenue fund, the approving authority shall
22 certify that an emergency justifies the expenditure and
23 shall state the specific nature of the emergency, the date
24 on which the requesting agency became aware of the
25 emergency, and the manner in which the requesting agency

1 became aware of the emergency.

2 **NEW SECTION.** Section 4. Executive branch budget
3 amendment procedures. (1) Upon receiving a proposed budget
4 amendment from a requesting agency, the executive branch
5 approving authority shall immediately forward a copy of the
6 entire budget amendment to the legislative fiscal analyst.

7 (2) If the executive branch approving authority denies
8 the request for a budget amendment, he shall immediately
9 forward a notice of denial to the legislative fiscal
10 analyst.

11 (3) If the executive branch approving authority
12 intends to make certification of the budget amendment,
13 immediately upon his completion of the certification he
14 shall forward the certification and all supporting
15 documentation to the legislative fiscal analyst. The
16 executive branch approving authority may not approve the
17 budget amendment until he receives the legislative finance
18 committee's written report for that budget amendment unless:

19 (a) the report is not received within 90 calendar days
20 from the date the certification and supporting documentation
21 were forwarded to the finance committee, in which case the
22 approving authority may approve the budget amendment; or

23 (b) there has been a waiver of review and report as
24 provided in subsection (6).

25 (4) The legislative fiscal analyst shall review each

1 proposed budget amendment that has been certified by the
2 executive branch approving authority for compliance with
3 statutory budget amendment requirements and standards and
4 shall present a written report of this review to the
5 legislative finance committee. Within 10 days after the
6 meeting of the legislative finance committee that considered
7 the budget amendment, the legislative fiscal analyst shall
8 submit the committee's report to the executive branch
9 approving authority.

10 (5) Upon receipt of the legislative finance
11 committee's written report, the executive branch approving
12 authority may approve or deny the budget amendment or may
13 return the budget amendment to the requesting agency for
14 further information. If the executive branch approving
15 authority has returned the budget amendment to the
16 requesting agency and the requesting agency resubmits the
17 budget amendment to the executive branch approving
18 authority, all procedures set out in this section apply to
19 the resubmitted budget amendment.

20 (6) If an emergency occurs that poses a serious threat
21 to the life, health, or safety of the public, the
22 legislative fiscal analyst may waive his written review and
23 the legislative finance committee's written report required
24 by this section. Upon receipt of such waiver, the executive
25 branch approving authority may approve the budget amendment

on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in [sections 1 through 5] confers any authority on the legislative finance committee to approve or deny budget amendments.

NEW SECTION. Section 5. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in [sections 1 through 5] may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

Section 6. Section 5-12-401, MCA, is amended to read:

"5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of the its

~~legislative appropriation except under authority of, which includes a lawfully approved and valid budget amendment."~~

Section 7. Section 5-12-402, MCA, is amended to read:

"5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed or approved budget amendments ~~submitted to the committee from the budget director~~ and shall make recommendations to the committee concerning proposed or approved budget amendments."

Section 8. Section 17-8-103, MCA, is amended to read:

"17-8-103. Expenditures in excess of appropriation unlawful. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation ~~or~~ including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any

1 expenditures, except as specifically provided by law.

2 (2) It shall be and is hereby made the duty of any and
3 all of such institutions, officers, departments, boards,
4 commissions, and bureaus to keep such expenditures,
5 obligations, and liabilities within the amount of such
6 legislative appropriation ~~or which includes an approved~~
7 ~~authorized and valid~~ budget amendment."

8 Section 9. Section 17-8-104, MCA, is amended to read:

9 "17-8-104. ~~Penalty civil and criminal penalties and~~
10 ~~remedies for violation. (1) (a)~~ Any authority or member of
11 a board of trustees or any persons, officers, or employee
12 violating the provisions of 17-8-103 shall be guilty of a
13 misdemeanor and upon conviction thereof shall be punished by
14 a fine of not less than \$50 or more than \$500 or imprisoned
15 ~~by imprisonment~~ in the county jail for not less than 30 days
16 or more than 6 months or by both such fine and
17 imprisonment."

18 ~~(b) Any authority or member of a board of trustees or~~
19 ~~any persons, officers, or employee violating the provisions of~~
20 ~~17-8-103 is and in addition thereto said authority, members~~
21 ~~persons, officers, or employee shall be personally liable and~~
22 ~~the surety or sureties on his bond shall also be liable to~~
23 ~~the state for the amount of the excess thus unlawfully~~
24 ~~expended. AN ACTION UNDER THIS SUBSECTION (B) MAY BE~~
25 ~~BROUGHT upon complaint of the attorney general, of the~~

1 legislature by joint resolution, of a standing committee of
2 the legislature, or of any taxpayer filed in a district
3 court of this state.

4 ~~(c) Any authority or member of a board of trustees or~~
5 ~~any persons, officers, or employee violating the provisions of~~
6 ~~17-8-103 is and said authority, members, persons, or officer~~
7 ~~shall be guilty of misfeasance in office and such employee~~
8 ~~shall be guilty of wrongdoing and each shall be subject to~~
9 ~~removal from office or from such employment. AN ACTION~~
10 ~~UNDER THIS SUBSECTION (C) MAY BE BROUGHT~~ upon complaint of
11 the attorney general, ~~the legislature by joint resolution, a~~
12 ~~standing committee of the legislature, or of any taxpayer,~~
13 ~~filed in a district court of this state and upon proof of~~
14 ~~violation of 17-8-103 in accordance with law.~~

15 ~~(2) Complaints under subsections (1)(b) and (1)(c) may~~
16 ~~be combined in a single action.~~

17 ~~(3) Remedies and penalties provided by this section~~
18 ~~may be pursued singly or in any combination."~~

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

25 NEW SECTION. Section 11. Effective date. This act is

HB 0548/02

1 effective July 1, 1983.

-End-

1 HOUSE BILL NO. 548

2 INTRODUCED BY MARKS, BARDANOUVE,

3 RAMIREZ, DONALDSON, BENGTSOON, PECK, WINSLOW,

4 AKLESTAD, STEPHENS, E. SMITH, GOGDOVER,

5 VAN VALKENBURG, HAFLEY, MCCALLUM

6 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
9 EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
10 AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
11 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 ~~NEW SECTION.~~ Section 1. Definitions. As used in
15 [sections 1 through 5], the following definitions apply:16 (1) "Additional services" means different services or
17 more of the same services.18 (2) "Agency" means each state office, department,
19 division, board, commission, council, committee,
20 institution, university unit, or other entity or
21 instrumentality of the executive branch, office of the
22 judicial branch, or office of the legislative branch of
23 state government.24 (3) "Approving authority" means the governor or his
25 designated representative for executive branch agencies; the

THIRD READING

There are no changes in HB548, and due to length will not
be rerun. Please refer to yellow copy for complete text.

March 16, 1983

SENATE STANDING COMMITTEE REPORT
(Finance & Claims)

That House Bill No. 548 be amended as follows:

1. Page 1, line 9.
Following: "AMENDMENTS;"
Insert: "DELETING THE CRIMINAL PENALTY RELATING TO EXPENDITURES IN
EXCESS OF APPROPRIATIONS;"
2. Page 2, line 1.
Following: "court"
Insert: "or his designated representative"
3. Page 2, line 2.
Following: "committees"
Insert: "or a designated representative"
4. Page 2, line 3.
Following: "regents"
Insert: "or its designated representative"
5. Page 4, line 10.
Following: "any"
Insert: "significant"
6. Page 4, line 14.
Following "state"
Strike: "earmarked"
Insert: "special"
7. Page 4, lines 23 and 24.
Following: "knowledge" on line 23
Strike: "or reasonably should have had knowledge"
8. Page 4, line 25.
Following "to"
Insert: "an appropriation subcommittee, the house appropriations
committee, or the senate finance and claims committee of"
9. Page 5, line 3.
Following: "biennium"
Insert: "(2)"
Renumber: following subsection
10. Page 5, line 11.
Following: "other"
Strike: "REASONABLE"
11. Page 5, line 22.
Following: "other"
Insert: "reasonable"
12. Page 6, line 10.
Following: "future"
Insert: "significant"

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Page 2

13. Page 6, line 21.

Strike: "earmarked"

Insert: "special"

14. Page 11, line 9.

Following: "CIVIL"

Strike: "and criminal"

15. Page 11, line 10 through line 17.

Following: "violation"

Strike: Subsection (a) in its entirety

Renumber: subsequent subsections

16. Page 12, line 1.

Following: "of"

Strike: "a standing committee of the legislature"

Insert: "the legislative finance committee"

17. Page 12, lines 11 and 12.

Following: "resolution," on line 11

Strike: "a standing committee of the legislature,"

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12 5-12-402, 17-8-103, AND 17-8-104, MCA; AND PROVIDING AN
13 EFFECTIVE DATE."

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 ~~NEW SECTION~~ Section 1. Definitions. As used in
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19 more of the same services.20 (2) "Agency" means each state office, department,
21 division, board, commission, council, committee,
22 institution, university unit, or other entity or
23 instrumentality of the executive branch, office of the
24 judicial branch, or office of the legislative branch of
25 state government.

1 (3) "Approving authority" means the governor or his
2 designated representative for executive branch agencies; the
3 chief justice of the supreme court ~~OR HIS DESIGNATED~~
4 ~~REPRESENTATIVE~~ for judicial branch agencies; appropriate
5 legislative committees ~~OR A DESIGNATED REPRESENTATIVE~~ for
6 legislative branch agencies; or the board of regents ~~OR ITS~~
7 ~~DESIGNATED REPRESENTATIVE~~ for the university system.

8 (4) "Budget amendment" means a legislative
9 appropriation to increase spending authority for the special
10 revenue or ~~FUND~~, proprietary funds, ~~OR UNRESTRICTED SUBFUND~~
11 contingent on total compliance with all budget amendment
12 procedures.

13 (5) "Emergency" means any catastrophe, disaster,
14 calamity, or other ~~equally~~ serious unforeseen and
15 unanticipated circumstance that has occurred subsequent to
16 the time an agency's appropriation was made, which was
17 clearly not within the contemplation of the legislature and
18 the governor, and which seriously affects one or more
19 functions of a state agency and the agency's expenditure
20 requirements for the performance of the function or
21 functions.

22 (6) "Executive branch approving authority" means the
23 governor or his designated representative.

24 (7) "Necessary" means essential to the public welfare
25 and of a nature which cannot wait until the next legislative

1 session for legislative consideration.

2 ~~{8}--"Proposed--to--and--rejected--by--the--legislature"~~

3 ~~means-a-proposal-known-to-the-requesting-agency-the-office~~

4 ~~of--budget--and--program--planning--the-office-of--the~~

5 ~~legislative-fiscal-analyst-or-the-approving-authority--that~~

6 ~~was~~

7 ~~{a}--made-in-a-bill-which-was-killed~~

8 ~~{b}--amended--out--of--a--bill-prior-to-final-defeat-or~~

9 ~~enactment--or~~

10 ~~{c}--made-to-and-rejected-by-any-legislative-committee~~

11 ~~or-subcommittee~~

12 ~~{9}{8} "Requesting agency" means the agency of state~~

13 ~~government that has requested a specific budget amendment.~~

14 ~~{10}--"Special-revenue-funds"--means-accounting-entities~~

15 ~~designated--with--the--beginning--numbers--of--82--and--83--as~~

16 ~~determined-in-the-treasury-fund-accounting--entity--matrix~~

17 ~~dated--December--21--1982--utilized-in-the-executive-budget~~

18 ~~1984-85--Accounting-entities-beginning-with--the--number--82~~

19 ~~are--designated--"state--special--revenue--or--earmarked"~~

20 ~~entities--Accounting-entities-beginning-with-the--number--83~~

21 ~~are-designated--"other-special-revenue"-entities.~~

22 ~~{11}{9} "University system unit" means the board of~~

23 ~~regents, office of the commissioner of higher education,~~

24 ~~university of Montana at Missoula, Montana state university~~

25 ~~at Bozeman, Montana college of mineral science and~~

1 technology at Butte, eastern Montana college at Billings,

2 northern Montana college at Havre, western Montana college

3 at Dillon, the agricultural experiment station with central

4 offices at Bozeman, the forestry and conservation experiment

5 station with central offices at Missoula, the cooperative

6 extension service with central offices at Bozeman, or the

7 bureau of mines and geology with central offices at Butte.

8 **NEW SECTION.** Section 2. Budget amendment

9 requirements. (1) No budget amendment may be approved:

10 (a) by the approving authority, except a budget

11 amendment to spend funds which were not available for

12 legislative consideration;

13 (b) by the approving authority, which contains any

14 **SIGNIFICANT** ascertainable commitment for any present or

15 future increased general fund support;

16 (c) by the approving authority, for the expenditure of

17 money in the state earmarked **SPECIAL** revenue fund unless an

18 emergency justifies such expenditure;

19 (d) by the approving authority, unless it will provide

20 additional services;

21 ~~{a}--by--the--approving--authority--for--additional~~

22 ~~services-which-have-been-proposed-to--and--rejected--by--the~~

23 ~~legislature--during--or--since--the--most--recent--regular~~

24 ~~legislative-session~~

25 ~~{f}{1E} by the approving authority, for any matter of~~

1 which the requesting agency had knowledge or reasonably
 2 should have had knowledge at a time when the proposal could
 3 have been presented to ~~AN APPROPRIATION SUBCOMMITTEE, THE~~
 4 ~~HOUSE APPROPRIATIONS COMMITTEE, OR THE SENATE FINANCE AND~~
 5 ~~CLAIMS COMMITTEE OF~~ the most recent legislative session open
 6 to that matter; or

7 ~~(g)(1)~~ to extend beyond June 30 of the last year of
 8 any biennium.

9 (2) All budget amendments shall itemize planned
 10 expenditures by fiscal year.

11 ~~(2)(3)~~ Each budget amendment must be submitted by the
 12 approving authority to the budget director and the office of
 13 the legislative fiscal analyst.

14 ~~NEW SECTION.~~ Section 3. Budget amendment
 15 certification. In approving a budget amendment, the
 16 approving authority shall make the following certifications
 17 and in addition shall provide all other ~~REASONABLE~~
 18 information required below as an integral part of the
 19 certification:

20 (1) The approving authority shall certify that:

21 (a) specific additional services will be provided as a
 22 result of the expenditures to be permitted under this budget
 23 amendment and shall also list each specific service to be so
 24 provided;

25 (b) the specific services to be provided under this

1 budget amendment are necessary;

2 (c) the agency requesting this budget amendment has no
 3 other ~~REASONABLE~~ alternative available to provide the
 4 additional services. Such certification shall specifically
 5 include determinations by the approving authority that the
 6 agency cannot provide all or specific parts or amounts of
 7 the additional services with existing personnel because of
 8 the present required workload of existing personnel, or that
 9 the agency is unable within its existing funding to fund all
 10 or part of such additional services from any source lawfully
 11 available to it.

12 ~~(d) the additional proposed services have not been~~
 13 ~~proposed to and rejected by the legislature during or since~~
 14 ~~the most recent regular legislative session and~~

15 ~~(e)(1)~~ the budget amendment makes no ascertainable
 16 present or future ~~SIGNIFICANT~~ commitment for increased
 17 general fund support.

18 (2) The approving authority shall include in its
 19 certification the specific criteria by which the
 20 effectiveness of the additional services will be evaluated
 21 and shall state a specific follow up date on which the
 22 written evaluation of such services, using the listed
 23 criteria, will be presented to the legislative fiscal
 24 analyst. The written evaluation must be presented to the
 25 legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state earmarked SPECIAL revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

~~NEW SECTION.~~ Section 4. Executive branch budget amendment procedures. (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the executive branch approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the executive branch approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The executive branch approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days

from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the executive branch approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the executive branch approving authority.

(5) Upon receipt of the legislative finance committee's written report, the executive branch approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the executive branch approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the executive branch approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

1 (6) If an emergency occurs that poses a serious threat
 2 to the life, health, or safety of the public, the
 3 legislative fiscal analyst may waive his written review and
 4 the legislative finance committee's written report required
 5 by this section. Upon receipt of such waiver, the executive
 6 branch approving authority may approve the budget amendment
 7 on completion of his certification. Such a waiver, however,
 8 affects only the legislative fiscal analyst's written review
 9 and the legislative finance committee's written report on
 10 the budget amendment, and all other budget amendment
 11 requirements and standards remain in effect. After such a
 12 waiver, the legislative fiscal analyst may complete the
 13 written review.

14 (7) Nothing in [sections 1 through 5] confers any
 15 authority on the legislative finance committee to approve or
 16 deny budget amendments.

17 ~~NEW SECTION.~~ Section 5. Voidness of improperly
 18 certified budget amendments. Any budget amendment that is
 19 not certified by the approving authority according to the
 20 standards and procedures set out in [sections 1 through 5]
 21 may be declared void in its entirety by a court of competent
 22 jurisdiction on complaint of the attorney general, the
 23 legislature, or the legislative finance committee. No funds
 24 may be expended under an improperly certified budget
 25 amendment.

1 Section 6. Section 5-12-401, MCA, is amended to read:
 2 "5-12-401. Submission of budget amendments to
 3 committee. All budget amendments for state agencies must be
 4 submitted through the budget director to the legislative
 5 finance committee as soon as received by the budget
 6 director. No state agency shall expend in excess of the its
 7 legislative appropriation ~~except under authority of,~~ which
 8 includes a lawfully approved and valid budget amendment."

9 Section 7. Section 5-12-402, MCA, is amended to read:
 10 "5-12-402. Review by legislative fiscal analyst. The
 11 legislative fiscal analyst shall review proposed or approved
 12 budget amendments ~~submitted to the committee from the budget~~
 13 ~~director~~ and shall make recommendations to the committee
 14 concerning proposed or approved budget amendments."

15 Section 8. Section 17-8-103, MCA, is amended to read:
 16 "17-8-103. Expenditures in excess of appropriation
 17 unlawful. (1) It shall be unlawful for the board of
 18 trustees, executive board, managerial staff, president,
 19 deans and faculty, or any other authority of any state
 20 institution maintained in whole or in part by the state or
 21 any officer, department, board, commission, or bureau,
 22 having charge of the disbursement or expenditure of the
 23 income provided by legislative appropriation or otherwise,
 24 to expend, contract for the expenditure, or to incur or
 25 permit the incurring of any obligation whatsoever, in any

one year, in excess of the legislative appropriation or, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law.

(2) It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such legislative appropriation or, which includes an approved, authorized, and valid budget amendment."

Section 9. Section 17-8-104, MCA, is amended to read:

"17-8-104. ~~Penalty Civil and criminal penalties and remedies~~ for violation. ~~(1) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$500 or imprisoned by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment.~~

~~(1)(a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions~~

~~of 17-8-103 is and in addition thereto said authority~~
~~member, person, officer, or employee shall be personally~~
~~liable and the surety or sureties on his bond shall also be~~
~~liable to the state for the amount of the excess thus~~
~~unlawfully expended.~~ AN ACTION UNDER THIS SUBSECTION (a)
~~(a) MAY BE BROUGHT~~ upon complaint of the attorney general
~~of the legislature by joint resolution of a standing~~
~~committee of the legislature~~ THE LEGISLATIVE FINANCE
~~COMMITTEE, or of any taxpayer filed in a district court of~~
~~this state.~~

~~(1)(b) Any authority or member of a board of trustees~~
~~or any person, officer, or employee violating the provisions~~
~~of 17-8-103 is and said authority, member, person, or~~
~~officer shall be guilty of misfeasance in office, and such~~
~~employee shall be guilty of wrongdoing, and each shall be~~
~~subject to removal from office or from such employment.~~ AN
~~ACTION UNDER THIS SUBSECTION (a) (b) MAY BE BROUGHT~~ upon
~~complaint of the attorney general, the legislature by joint~~
~~resolution, a standing committee of the legislature, or of~~
~~any taxpayer, filed in a district court of this state and~~
~~upon proof of violation of 17-8-103, in accordance with law.~~

~~(2) Complaints under subsections (1)(a) and~~
~~(1)(b) may be combined in a single action.~~

~~(3) Remedies and penalties provided by this section~~
~~may be pursued singly or in any combination."~~

1 ~~NEW_SECTION.~~ Section 10. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 ~~NEW_SECTION.~~ Section 11. Effective date. This act is
8 effective July 1, 1983.

-End-