

HOUSE BILL 513

Introduced by Rice, et al.

2/01	Introduced
2/02	Referred to State Administration
2/03	Fiscal Note Requested
2/08	Fiscal Note Received
2/10	Hearing
2/10	Fiscal Note Printed
2/14	Tabled in Committee

1 *House* BILL NO. *513*  
 2 INTRODUCED BY *Rice, Longhini, Lee, DeBruycker*  
 3 *Phillips, M. Hanson, Ryan, Diercke*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROGRAM FOR  
 5 THE REPORTING OF ILLEGAL, IMPROPER, DANGEROUS, OR WASTEFUL  
 6 ACTIONS BY STATE GOVERNMENT; REQUIRING THE LEGISLATIVE  
 7 AUDITOR TO REVIEW REPORTS AND TO REPORT IMPROPER  
 8 GOVERNMENTAL ACTIONS TO THE APPROPRIATE AUTHORITIES; AND  
 9 REQUIRING REPORTS TO THE LEGISLATURE."

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

12 NEW SECTION. Section 1. Policy. It is the policy of  
 13 the legislature that public and state employees be  
 14 encouraged to disclose improper or wasteful governmental  
 15 actions, and it is the intent of the legislature to protect  
 16 the rights of individuals making these disclosures.

17 NEW SECTION. Section 2. Definitions. As used in  
 18 [sections 1 through 7], the following definitions apply:

19 (1) "Employee" means an individual employed or holding  
 20 office in a department or an agency of state government.

21 (2) "Improper governmental action" means an action by  
 22 a state agency or an employee that:

23 (a) is undertaken in the performance of an agency's  
 24 function or an employee's official duties, whether or not  
 25 the action is within the scope of the employee's employment;

1 and

2 (b) is in violation of a state law or rule, is an  
 3 abuse of authority, is of substantial and specific danger to  
 4 the public health or safety, or is an inefficient or  
 5 ineffective use or gross waste of public funds.

6 (3) "Legislative auditor" means the legislative  
 7 auditor as provided in 5-13-301.

8 NEW SECTION. Section 3. Toll-free hotline -- display  
 9 of signs -- duties of legislative auditor. (1) The  
 10 legislative auditor shall maintain a toll-free hotline for  
 11 the receipt of calls related to alleged instances of  
 12 improper governmental action.

13 (2) Each state agency shall prominently display a sign  
 14 at least 12 inches high and 18 inches wide that states:

15 NOTICE:  
 16 THIS AGENCY IS FUNDED BY TAXPAYER MONEY. IF YOU OBSERVE  
 17 AGENCY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER,  
 18 A DANGER TO THE PUBLIC HEALTH, OR WASTEFUL, PLEASE CALL THE  
 19 LEGISLATIVE AUDITOR'S TOLL-FREE HOTLINE: (NUMBER)

20 ALL CALLS MAY BE MADE ANONYMOUSLY

21 (3) The legislative auditor shall distribute to state  
 22 agencies uniform signs, printed in accordance with  
 23 subsection (2), upon request and without cost.

24 (4) The legislative auditor shall review all telephone  
 25 calls received pursuant to [this act], maintain a record of

1 all calls, and process all information received as provided  
2 in [this act].

3 **NEW SECTION. Section 4. Review of report of improper**  
4 **governmental action -- reports by legislative auditor. (1)**  
5 Upon receiving specific information that a state agency has  
6 engaged in improper governmental action, the legislative  
7 auditor shall conduct a preliminary review of the matter as  
8 he considers appropriate. During the review, the identity  
9 of the person who provided the information initiating the  
10 review must be kept confidential unless the legislative  
11 auditor determines that the information has been provided  
12 other than in good faith.

13 (2) The legislative auditor, upon completion of the  
14 preliminary review, shall notify the person, if known, who  
15 provided the information initiating the investigation of the  
16 status of the review.

17 (3) (a) If the legislative auditor determines that  
18 there is reasonable cause to believe that improper  
19 governmental action has occurred, he shall report the nature  
20 and details of the activity to:

21 (i) the head of the agency involved, if the reporting,  
22 in the opinion of the legislative auditor, will not hinder  
23 review of the matter; and

24 (ii) if appropriate, the attorney general or another  
25 authority the legislative auditor considers appropriate.

1 (b) In a case in which the legislative auditor submits  
2 a report of alleged improper activity to the head of an  
3 agency, the attorney general, or any other individual, the  
4 person receiving the report shall report to the legislative  
5 auditor with respect to any action taken regarding the  
6 activity. If the legislative auditor determines that  
7 appropriate action is not being taken within a reasonable  
8 time, he shall report the determination to the governor and  
9 the legislature.

10 (4) This section does not limit any authority  
11 conferred upon the attorney general or any other agency of  
12 government to investigate any matter.

13 (5) In addition to any other action taken by the  
14 legislative auditor, he may recommend suggestions for the  
15 improved use of funds and controls over resources to the  
16 agency involved.

17 (6) The legislative auditor shall include in his  
18 report to each regular session of the legislature a summary  
19 of the calls received during the period since the last  
20 report. The summary shall include but not be limited to the  
21 number of calls received, the general nature of the  
22 activities reported, the agencies affected, and any remedial  
23 action taken or proposed.

24 **NEW SECTION. Section 5. Right to disclose improper**  
25 **governmental actions -- interference prohibited. (1) An**

1 employee may not directly or indirectly make use or attempt  
2 to make use of his official authority or influence for the  
3 purpose of intimidating, threatening, coercing, commanding,  
4 influencing, or attempting to intimidate, threaten, coerce,  
5 command, or influence any individual for the purpose of  
6 interfering with the right of the individual to disclose  
7 information concerning improper governmental action to the  
8 legislative auditor or his representative.

9 (2) For the purposes of subsection (1), "use of his  
10 official authority or influence" includes an employee's  
11 taking, directing others to take, recommending, processing,  
12 or approving any personnel action such as an appointment,  
13 promotion, transfer, assignment, reassignment,  
14 reinstatement, restoration, reemployment, performance  
15 evaluation, or any adverse action as provided in [section 6]  
16 or other disciplinary action.

17 NEW SECTION. **Section 6. Retaliatory action against**  
18 **employee providing information -- judicial review -- duties**  
19 **of legislative auditor.** (1) An employee may seek judicial  
20 review in district court of a reprisal or retaliatory  
21 action, whether or not there has been an administrative  
22 review of the action, if:

23 (a) the employee provides his name and specific  
24 information to the legislative auditor on a matter that is  
25 found to warrant further investigation or other action or

1 that is provided by the employee in good faith, as  
2 determined by the legislative auditor, whether or not  
3 further action is warranted; and

4 (b) the employee is subjected to any reprisal or  
5 retaliatory action undertaken during the period beginning on  
6 the day after the date on which the information is provided  
7 to the legislative auditor and ending on the date that is 2  
8 years after the legislative auditor's report on the matter.  
9 In the action, the reviewing court may award reasonable  
10 attorney fees.

11 (2) During the 2-year period referred to in subsection  
12 (1), the legislative auditor shall contact the employee who  
13 provided specific information involved on at least a  
14 quarterly basis for the purpose of determining if any  
15 changes in the employee's work situation exist that are  
16 related to the employee's having provided information. If  
17 the legislative auditor has reason to believe that a change  
18 in work situation has occurred, he shall investigate and  
19 report on the matter in accordance with [sections 1 through  
20 7].

21 (3) For the purpose of this section, "reprisal or  
22 retaliatory action" means, but is not limited to:

- 23 (a) denial of adequate staff to perform duties;
- 24 (b) frequent staff changes;
- 25 (c) frequent and undesirable office changes;

- (d) refusal to assign meaningful work;
- (e) unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (f) demotion;
- (g) reduction in pay;
- (h) denial of promotion;
- (i) suspension; and
- (j) dismissal.

**NEW SECTION. Section 7. Summary to be provided employees.** A written summary of [sections 1 through 7] and procedures for reporting improper governmental actions established by the legislative auditor's office must be made available by the employer to each employee upon entering public employment.

**NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 2, chapter 2, and the provisions of Title 2, chapter 2, apply to [sections 1 through 7].

**NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB513, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An Act creating a program for the reporting of illegal, improper, dangerous, or wasteful actions by state government; requiring the legislative auditor to review reports and to report improper governmental actions to the appropriate authorities; and requiring reports to the legislature.

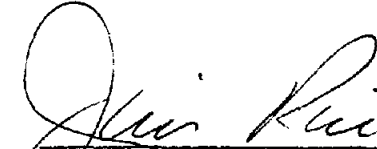
ASSUMPTIONS:

1. An in-state toll free line.
2. Monthly usage not to exceed 9 hours.
3. Number of calls will range from 10 to 250 per year (maximum of one per day).
4. Toll free line will be "manned" from 8:00 a.m. to 5:00 p.m. daily, Monday through Friday.
5. 350 12" x 18" signs will be printed.
6. No additional FTE will be needed.
7. Staff responsible for "manning" toll free line will be trained.
8. Impact on audit personnel will be dependent on the nature of the alligation. Assume 10 percent of calls will require follow-up. Experienced staff will be used to do the follow-up.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Personal Services	\$ -0-	\$12,085	\$12,085	\$ -0-	\$12,085	\$12,085
Operating Expenses	-0-	2,500	2,500	-0-	2,500	2,500
Total	\$ -0-	\$14,585	\$14,585	\$ -0-	\$14,585	\$14,585
<u>Funding:</u> General Fund						

 2/8/89  
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
 OFFICE OF BUDGET AND PROGRAM PLANNING

 2/10/89  
 JIM RICE, PRIMARY SPONSOR DATE  
 Fiscal Note for HB513, as introduced

**HB 513**