

HOUSE BILL 63

Introduced by Brandewie, et al.

12/02	Fiscal Note Requested
12/04	Introduced
12/04	Referred to Appropriations
12/04	First Reading
12/08	Fiscal Note Received
12/08	Fiscal Note Printed
12/09	Hearing
12/10	Tabled in Committee

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2 INTRODUCED BY *House* BILL NO. *63*  
3 BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING *Legating*  
4 *Devlin Franken Carbone*  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING LOCAL  
6 GOVERNMENT AUDIT AND AUDIT REVIEW FUNCTIONS FROM THE  
7 DEPARTMENT OF COMMERCE TO THE OFFICE OF THE LEGISLATIVE  
8 AUDITOR; MODIFYING LOCAL GOVERNMENTS RECORDS AND REPORTING  
9 REQUIREMENTS; EXPANDING ALLOWABLE EXCEPTIONS TO BUDGET  
10 AMENDMENT REQUIREMENTS TO INCLUDE RETIREMENT CREDITS AND  
11 LEAVE BUYOUTS FOR PERSONNEL TRANSFERRED TO AN AGENCY  
12 PURSUANT TO A LEGISLATIVELY AUTHORIZED REORGANIZATION;  
13 AMENDING SECTIONS 2-6-402, 2-6-403, 2-7-501, 2-7-503,  
14 2-7-505, 2-7-506, 2-7-513, 2-7-514, 2-7-515, 2-7-516,  
15 2-7-517, 2-7-518, 2-7-522, 2-9-702, 2-9-802, 7-2-4906,  
16 7-2-4911, 7-2-4912, 7-4-2634, 7-6-2114, 7-6-2203, 7-6-2212,  
17 7-6-4111, 7-6-4113, 7-7-123, 7-21-2114, 17-6-103, 17-7-402,  
18 19-18-205, 19-18-206, 20-9-203, 61-2-208, 85-7-1616, AND  
19 85-7-1913, MCA, AND SECTION 28, CHAPTER 489, LAWS OF 1991;  
20 REPEALING SECTIONS 7-6-210 AND 85-9-611, MCA; AND PROVIDING  
21 EFFECTIVE DATES."

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 **Section 1.** Section 2-6-402, MCA, is amended to read:

25 "2-6-402. Local government records committee --

1 creation. (1) There is a local government records committee.  
2 (2) The committee consists of the following seven  
3 members:  
4 (a) the state archivist;  
5 (b) the state records manager;  
6 (c) ~~the-bureau-chief-of-the-local--government--services~~  
7 ~~bureau~~ a representative of the department of commerce;  
8 (d) two local records custodians, appointed by the  
9 director of the Montana historical society; and  
10 (e) two additional local records custodians, appointed  
11 by the secretary of state.  
12 (3) Committee members subject to appointment shall hold  
13 office for a period of 2 years beginning on January 1 of the  
14 year following their appointment.  
15 (4) Any vacancies must be filled in the same manner  
16 they were filled originally.  
17 (5) The committee shall elect a presiding officer and a  
18 vice presiding officer.  
19 (6) The committee shall meet twice a year upon the call  
20 of the secretary of state or the presiding officer.  
21 (7) Members of the committee not serving as part of  
22 their compensated government employment must be compensated  
23 in accordance with 2-18-501 through 2-18-503 for each day in  
24 committee attendance. Members who serve as part of their  
25 compensated government employment may not receive additional

1 compensation, but the employing governmental entity shall  
2 furnish, in accordance with the prevailing per diem rates, a  
3 reasonable allowance for travel and other expenses incurred  
4 in attending committee meetings."

5 **Section 2.** Section 2-6-403, MCA, is amended to read:

6 **"2-6-403. Duties and responsibilities.** (1) The local  
7 government records committee shall approve, modify, or  
8 disapprove proposals for local government records retention  
9 and disposition schedules.

10 (2) The committee shall appoint a subcommittee, known  
11 as the local government records destruction subcommittee, to  
12 handle requests for disposal of records. The subcommittee  
13 consists of the state archivist and ~~the bureau chief of the~~  
14 ~~local government services bureau~~ the representative of the  
15 department of commerce. Unless specifically authorized by  
16 statute, a local government public record may not be  
17 destroyed or otherwise disposed of without the unanimous  
18 approval of the subcommittee. When approval is required, a  
19 request for the disposal or destruction of any local  
20 government records must be submitted to the subcommittee by  
21 the entity concerned.

22 (3) The local government records committee may by  
23 unanimous approval establish categories of records for which  
24 a disposal request is not required, providing that those  
25 records are retained for the designated retention period.

1 (4) The committee shall respond to requests for  
2 technical advice on matters relating to local government  
3 records.

4 (5) The committee shall provide leadership and  
5 coordination in matters affecting the records of multiple  
6 local governments."

7 **Section 3.** Section 2-7-501, MCA, is amended to read:

8 **"2-7-501. Definitions.** Unless the context requires  
9 otherwise, in this part, the following definitions apply:

10 (1) "Audit" means a financial audit and includes  
11 financial statement and financial-related audits as defined  
12 by government auditing standards as established by the U.S.  
13 comptroller general.

14 (2) "Board" means the Montana board of public  
15 accountants provided for in 2-15-1866.

16 (3) "Department" means the department of commerce.

17 (4) (a) "Financial assistance" means assistance  
18 provided by a federal, state, or local government entity to  
19 a local government entity or subrecipient to carry out a  
20 program. Financial assistance may be in the form of grants,  
21 contracts, cooperative agreements, loans, loan guarantees,  
22 property, interest subsidies, insurance, direct  
23 appropriations, or other noncash assistance. Financial  
24 assistance includes awards received directly from federal  
25 and state agencies or indirectly when subrecipients receive

1 funds identified as federal or state funds by recipients.  
 2 The granting agency is responsible for identifying the  
 3 source of funds awarded to recipients. The recipient is  
 4 responsible for identifying the source of funds awarded to  
 5 subrecipients.

6 (b) Financial assistance does not include direct  
 7 federal, state, or local government cash assistance to  
 8 individuals.

9 (5) "Financial report" means a presentation of  
 10 schedules that reflect a current financial position and the  
 11 operating results for the 1-year reporting period.

12 (6) "Independent auditor" means:

13 (a) a federal, state, or local government auditor who  
 14 meets the standards specified in the government auditing  
 15 standards; or

16 (b) a licensed accountant who meets the standards in  
 17 subsection (6)(a).

18 (7) "Legislative auditor" means the office of the  
 19 legislative auditor established in 5-13-301.

20 ~~(7)~~(8) (a) "Local government entity" means a county,  
 21 city, district, or public corporation that:

22 (i) has the power to raise revenue for the purpose of  
 23 serving the general public;

24 (ii) is governed by a board, commission, or individual  
 25 elected or appointed by the public or representatives of the

1 public; and

2 (iii) receives local, state, or federal financial  
 3 assistance.

4 (b) Local government entities include but are not  
 5 limited to:

6 (i) airport authority districts;

7 (ii) cemetery districts;

8 (iii) counties;

9 (iv) county housing authorities;

10 (v) county road improvement districts;

11 (vi) county sewer districts;

12 (vii) county water districts;

13 (viii) county weed control districts;

14 (ix) drainage districts;

15 (x) fire department relief associations;

16 (xi) fire districts;

17 (xii) hospital districts;

18 (xiii) incorporated cities or towns;

19 (xiv) irrigation districts;

20 (xv) mosquito districts;

21 (xvi) municipal housing authority districts;

22 (xvii) port authorities;

23 (xviii) refuse disposal districts;

24 (xix) rural improvement districts;

25 (xx) school districts including a district's

1 extracurricular funds;

2 (xxi) soil conservation districts;

3 (xxii) special education or other cooperatives;

4 (xxiii) television districts;

5 (xxiv) urban transportation districts;

6 (xxv) volunteer fire departments; and

7 (xxvi) water conservancy districts.

8 ~~†8†~~(9) "Revenues" means all receipts of a local  
9 government entity from any source excluding the proceeds  
10 from bond issuances."

11 **Section 4.** Section 2-7-503, MCA, is amended to read:

12 "2-7-503. Financial reports and audits of local  
13 government entities. (1) The governing body or managing or  
14 executive officer of a local government entity, other than a  
15 school district or associated cooperative, shall ensure that  
16 a financial report is made every year. A school district or  
17 associated cooperative shall comply with the provisions of  
18 20-9-213. The financial report must cover the preceding  
19 fiscal year, be in a form prescribed by the department, and  
20 be completed within 4 months of the end of the reporting  
21 period. The local government entity shall submit the  
22 financial report to the department legislative auditor for  
23 review. After reviewing the financial report, the  
24 legislative auditor shall transfer the report to the  
25 department.

1 (2) The department shall prescribe a uniform reporting  
2 system for all local government entities subject to  
3 financial reporting requirements, other than school  
4 districts. The superintendent of public instruction shall  
5 prescribe the reporting requirements for school districts.

6 (3) (a) The governing body or managing or executive  
7 officer of each local government entity receiving revenues  
8 or financial assistance in the period covered by the  
9 financial report in excess of \$200,000 or federal financial  
10 assistance in excess of \$25,000 shall cause an audit to be  
11 made at least every 2 years. The audit must cover the  
12 entity's preceding 2 fiscal years. The audit must commence  
13 within 9 months from the close of the last fiscal year of  
14 the audit period. The audit must be completed and submitted  
15 to the department legislative auditor for review within 1  
16 year from the close of the last fiscal year covered by the  
17 audit.

18 (b) The governing body or managing or executive officer  
19 of a local government entity that does not meet the criteria  
20 established in subsection (3)(a) shall at least once every 4  
21 years, if directed by the department legislative auditor,  
22 or, in the case of a school district, if directed by the  
23 department legislative auditor at the request of the  
24 superintendent of public instruction, cause a financial  
25 review, as defined by ~~department--rule~~ the legislative

auditor, to be conducted of the financial statements of the entity for the preceding fiscal year.

(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 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 legislative auditor 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 legislative auditor 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 state special revenue fund to the credit of the legislative

auditor."

**Section 5.** Section 2-7-505, MCA, is amended to read:

"2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted-by-the-department-by-rule as prescribed by the legislative auditor.

(2) The department legislative auditor, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal laws and regulations applicable to local government entities."

**Section 6.** Section 2-7-506, MCA, is amended to read:

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

(2) The department legislative auditor, in consultation with the board, shall adopt-rules-governing prescribe the:

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

(b) procedures and qualifications for placing

1 applicants on the roster;

2 (c) procedures for reviewing the qualifications of  
3 independent auditors on the roster to justify their  
4 continuance on the roster; and

5 (d) fees payable to the department legislative auditor  
6 for application for placement on the roster.

7 (3) An audit made by an independent auditor must be  
8 pursuant to a contract entered into by the governing body or  
9 managing or executive officer of the local government. The  
10 department legislative auditor must be a party to the  
11 contract, and the contract may not be executed until it is  
12 signed by the department legislative auditor. All contracts  
13 for conducting audits must be in a form prescribed or  
14 approved by the department legislative auditor.

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

20 (5) If a local government entity fails to present a  
21 signed contract to the department legislative auditor for  
22 approval within 90 days of receipt of the audit notice, the  
23 department legislative auditor shall designate an  
24 independent auditor to perform the audit. The costs incurred  
25 by the department legislative auditor in arranging the audit

1 must be paid by the local government entity to the  
2 department legislative auditor in the manner of other claims  
3 against the local government entity."

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

5 "2-7-513. Content of audit report and financial report.

6 (1) The audit reports ~~shall~~ must comply with the reporting  
7 requirements of government auditing standards issued by the  
8 U.S. comptroller general and federal regulations ~~adopted-by~~  
9 department-rule as prescribed by the legislative auditor.

10 (2) The department shall prescribe general methods and  
11 details of accounting for the financial report for local  
12 government entities other than schools. The financial report  
13 must be submitted in a form required by the department. The  
14 superintendent of public instruction shall prescribe the  
15 general methods and details of accounting for financial  
16 reports for schools."

17 **Section 8.** Section 2-7-514, MCA, is amended to read:

18 "2-7-514. Filing of audit report and financial report.

19 (1) Completed audit reports must be filed with the  
20 department legislative auditor. Completed financial reports  
21 must be filed with the department legislative auditor as  
22 provided in 2-7-503(1). The state superintendent of public  
23 instruction shall file with the department legislative  
24 auditor a list of school districts subject to audit under  
25 2-7-503(3). The list must be filed with the department

legislative auditor within 6 months after the close of the fiscal year.

(2) At the time the financial report is filed or, in the case of a school district, when the ~~audit--report--is~~ filed--with--the-department list of school districts subject to audit is filed, the local government entity shall pay to the department legislative auditor a filing fee. The department legislative auditor shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which. The fee must be based upon the costs incurred by the department legislative auditor 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 superintendent of public instruction from the state equalization aid account. The department legislative auditor shall adopt prescribe the fee schedule by rule based upon the local government entities' revenue amounts.

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

~~(4)--The--department--is--authorized--under--this--part--to--charge--a--surcharge--on--the--filing--fee--to--generate--the--necessary--revenue--to--repay--the--general--fund--loan--over--a~~

~~5-year--period--(Subsection--(4)--terminates--June--30, 1997--sec--317--Ch--489--B--1991--)~~

**Section 9.** 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 notify in writing the department independent auditor who conducted the audit ~~in-writing~~ as to what action ~~they--plan~~ it plans to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

~~(2)--Notification--to--the--department--shall--include--a--statement--by--the--governing--bodies--that--noted--deficiencies--or--recommendations--for--improvement--have--been--acted--upon--by--adoption--as--recommended,--adoption--with--modification,--or--rejection.~~

~~(3)~~ The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department legislative auditor and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. ~~The department shall notify the entity of the acceptance of the corrective measures, if the department and the local government entity fail to agree, a conference~~



~~between--the--parties--must--be--held,--Failure--to--resolve findings-or-implement-corrective-measures--shall--result--in the--withholding--of-financial-assistance-in-accordance-with rules--adopted--by--the--department--pending--resolution--or compliance-~~

(4)(2) In cases where in which 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 legislative auditor, 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 legislative auditor within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department legislative auditor may refer the case to the attorney general to prosecute the case at the expense of the local government entity."

**Section 10.** 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 by the governing body or managing or executive officer of the local government entity and the independent auditor

and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department legislative auditor 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 the state special revenue fund to the credit of the legislative auditor."

**Section 11.** Section 2-7-517, MCA, is amended to read:

"2-7-517. **Penalty.** (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department legislative auditor for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department legislative auditor 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 prescribed by rule the legislative auditor and shall report the failure to report to the governor. Upon directions from the governor to the state auditor, further warrants may not be issued to the local government entity until the report is received or the filing fee is paid. 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.

1 (2) When a local government entity has failed to make  
 2 payment as required by 2-7-516(1) within 60 days of  
 3 receiving a bill for an audit, the department legislative  
 4 auditor may--issue--an--order--stopping--payment--of--any--state  
 5 financial--aid--to--the--local--government--entity shall report  
 6 the failure to pay to the governor. Upon directions from the  
 7 governor to the state auditor, further warrants may not be  
 8 issued to the local government entity until the payment is  
 9 made. Upon payment for the audit, all financial aid that was  
 10 withheld because of failure to make payment must be released  
 11 and paid to the local government entity."

12 **Section 12.** Section 2-7-518, MCA, is amended to read:

13 "2-7-518. Deposit of fees. (1) All fees received from  
 14 local government entities ~~after June 30, 1981,~~ that relate  
 15 to the department's duties under this part shall must be  
 16 deposited in the enterprise fund to the credit of the  
 17 department of--commerce for administration of Title--2,  
 18 chapter-7, part-5 the department's duties under this part.

19 (2) All fees received by the legislative auditor from  
 20 local government entities must be deposited in the state  
 21 special revenue fund to the credit of the legislative  
 22 auditor for the administration of the legislative auditor's  
 23 duties under this part."

24 **Section 13.** Section 2-7-522, MCA, is amended to read:

25 "2-7-522. Report review. (1) The department legislative

1 auditor shall determine whether the provisions of this part  
 2 , have been complied with by the independent auditor.

3 (2) Upon receipt of the audit report from the local  
 4 government entity, the department legislative auditor shall  
 5 review the report. If the department legislative auditor  
 6 determines the reporting requirements have not been met, the  
 7 department legislative auditor shall notify the local  
 8 government entity and the independent auditor submitting the  
 9 report of the significant issues of noncompliance. The  
 10 notification must include issuance of a statement of  
 11 deficiencies by the department legislative auditor. The  
 12 department legislative auditor shall allow the independent  
 13 auditor 60 days to correct the identified deficiencies.

14 (3) If the corrections are not made within 60 days of  
 15 the department's legislative auditor's notice, the  
 16 department legislative auditor shall notify the local  
 17 government entity that the report has not been received.  
 18 Failure to submit a report shall must result in the  
 19 withholding of payment of the audit fee pending resolution  
 20 of the identified deficiencies or receipt of a corrected  
 21 report.

22 (4) Upon review of the report, if the department  
 23 legislative auditor determines the independent auditor has  
 24 issued a report that fails to meet the auditing standards  
 25 referred to in 2-7-513 or contains false or misleading

information, the department legislative auditor shall notify the board.

(5) The department legislative auditor shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department legislative auditor shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department legislative auditor must have access in its the legislative auditor's office to the working papers of the independent auditor."

**Section 14.** Section 2-9-702, MCA, is amended to read:

"2-9-702. Amount. {1} The amount for which a county officer or employee ~~shall-be~~ is bonded ~~shall~~ must be based on the amount of money or property handled and the opportunity for defalcation.

~~{2}--The-amount-for-which-a-county-officer--or--employer or-group-of-officers-or-employees-shall-be-bonded-is-subject to--the--supervision--of--the-department-of-commerce--if-the department-of-commerce-determines-that--the--amount--of--the bond--is--inadequate--it--may--require--the-board-of-county commissioners-to-purchase-an-adequate-bond--"~~

**Section 15.** Section 2-9-802, MCA, is amended to read:

"2-9-802. Bonds -- amount. {1} All elected or appointed

city or town officers and employees ~~shall~~ must be bonded in such sums as the ordinance may require. The amount for which a city or town officer or employee ~~shall-be~~ is bonded ~~shall~~ must be based on the amount of money or property handled and the opportunity for defalcation.

~~{2}--The-amount-for-which-a-city-or-town-officer-or employee--or--group-of-officers-or-employees-shall-be-bonded is-subject-to-the-supervision-of-the-department-of-commerce--if-the-department-of-commerce-determines-that-the-amount--of the--bond--is--inadequate--it--may--require-the-city-or-town council--or--commission-to-purchase-an-adequate-bond--"~~

**Section 16.** Section 7-2-4906, MCA, is amended to read:

"7-2-4906. Effect of sufficient vote to disincorporate.

(1) In case the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall, ~~under-their-hands,~~ make and file in their office and cause to be entered upon their proceedings an order that the petition for disincorporation be granted and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A The county commissioners shall send a certified copy of the order shall-be-sent to the secretary of state, and the head of the department of commerce, and the legislative auditor."

**Section 17.** Section 7-2-4911, MCA, is amended to read:

**"7-2-4911. Certification of financial condition.** (1)

Upon receiving a certified copy of the order of disincorporation, the ~~director-of-the-department-of-commerce~~ legislative auditor or the legislative auditor's designee shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement ~~shall~~ must include but is not be limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts ~~and/or~~ and taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness."

**Section 18.** Section 7-2-4912, MCA, is amended to read:

**"7-2-4912. Management of unencumbered cash.** (1) Under the supervision of the ~~director--of--the--department--of~~ commerce legislative auditor or his the legislative auditor's agent designee, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check

~~shall~~ must be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place ~~said~~ the money in a special fund, to be drawn upon as provided in this part."

**Section 19.** Section 7-4-2634, MCA, is amended to read:

**"7-4-2634. Fees to be noted on recorded documents.** On each instrument delivered to ~~him~~ the county clerk for recording, the county clerk shall endorse ~~on-it~~ all charges made for each service, and the endorsement ~~shall~~ must be recorded as a part of the instrument in ~~his~~ the county clerk's office ~~in-order-that-the-department-of-commerce-may~~ verify to document that the charges ~~and-may--see--that--they~~ have been properly entered on the fee book or reception record in the county clerk's office."

**Section 20.** Section 7-6-2114, MCA, is amended to read:

**"7-6-2114. Inspection of treasurer's books and records.** (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer ~~must~~ shall permit the ~~department--of~~ commerce legislative auditor, the legislative auditor's designee, and the county clerk, or the board of county commissioners to examine ~~his~~ the treasurer's books and count

1 the money in the treasury when any of them wants to make an  
2 examination or counting."

3 **Section 21.** Section 7-6-2203, MCA, is amended to read:

4 "7-6-2203. Annual financial statement. (1) Within 120  
5 days after the close of each fiscal year, the county clerk  
6 shall ~~make--out~~ prepare and present to the board of county  
7 commissioners and the ~~department--of--commerce~~ legislative  
8 auditor a complete statement of the financial condition of  
9 the county as required by 2-7-503. The statement must show:

10 (a) a detailed description of all of the resources and  
11 liabilities of the county and the book value of ~~them~~ the  
12 resources and liabilities;

13 (b) the amount of money received, showing the source of  
14 that revenue;

15 (c) the amount of money disbursed, with the purpose of  
16 disbursement;

17 (d) the operation of each of the cash and warrant  
18 accounts, showing the balance at the beginning of the year,  
19 the credits, the debits, and the balance at the end of the  
20 year;

21 (e) the assessed valuation of the real and personal  
22 property of the county;

23 (f) the rate of taxation and the amount of taxes  
24 delinquent for the preceding years; and

25 (g) ~~such other items as~~ that the department of commerce

1 may prescribe.

2 (2) The statement ~~shall~~ must be made out on the a form  
3 designated approved by the department of commerce."

4 **Section 22.** Section 7-6-2212, MCA, is amended to read:

5 "7-6-2212. Authorization to maintain petty cash fund.

6 (1) The board of county commissioners, ~~with the approval--of~~  
7 ~~the--department-of-commerce~~, may set aside a sum of not less  
8 than \$100 or more than \$1,000 out of the general fund, which  
9 ~~shall~~ must be known as a petty cash fund, for the purpose of  
10 paying incidental expenses, such as freight, express,  
11 postage, and other similar items, which that must be paid  
12 for in cash at the time of delivery.

13 (2) (a) In counties having a county auditor, the county  
14 auditor is responsible for expenditures from the petty cash  
15 fund.

16 (b) In counties not having a county auditor, the county  
17 clerk is responsible for expenditures from the petty cash  
18 fund."

19 **Section 23.** Section 7-6-4111, MCA, is amended to read:

20 "7-6-4111. Annual financial statement. (1) Within 120  
21 days after the close of each fiscal year, the city or town  
22 clerk of each city and town ~~must make-out~~ shall prepare, in  
23 duplicate, a complete statement of the financial condition  
24 of the city or town for that fiscal year, as required by  
25 2-7-503, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it the property;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information ~~which~~ that may be required by the department of commerce.

(2) The ~~forms~~ form on which the statement ~~shall~~ must be made ~~shall~~ must be prescribed approved by the department."

**Section 24.** Section 7-6-4113, MCA, is amended to read:

"7-6-4113. Filing of annual financial statement. ~~†††~~  
The city or town clerk must shall, within 120 days following the close of each fiscal year, transmit one copy of the statement required by 2-7-503 to the ~~department-of-commerce~~ legislative auditor and must shall present the other copy to the city or town council or commission.

~~†††--If-a-city-or-town-clerk-fails-to-file-a-copy-of-the statement-with-the-department-within-the-time-specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections (5) and (6) of 2-7-503 and all of the provisions of subsections (5) and (6) of 2-7-503 apply to it."~~

**Section 25.** Section 7-7-123, MCA, is amended to read:

"7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as is not needed for the payment of bonds or

1 interest coupons in general obligation bonds or securities  
 2 of the United States; state bonds or securities; time or  
 3 savings deposits; county, city, or school district bonds;  
 4 county or city warrants; or other bonds or securities ~~which~~  
 5 that are supported by general taxation, except irrigation  
 6 district bonds and special improvement district or  
 7 maintenance district bonds or warrants. ~~All---those~~  
 8 ~~investments--must--first--be--approved--by--the--department--of~~  
 9 ~~commerce-~~

10 (b) All those bonds, securities, or time or savings  
 11 deposits must be due and payable at least 60 days before the  
 12 obligations for the payment of which the sinking fund was  
 13 established are due and payable.

14 (2) The bonds, securities, and any time or savings  
 15 deposits in which any sinking funds are invested ~~shall~~ must  
 16 be kept in the custody of the county or city treasurer or  
 17 town clerk and held ~~by-him~~ for the benefit of the county,  
 18 city, or town. The treasurer shall properly protect the  
 19 bonds, securities, and any time or savings deposits by  
 20 insurance, the use of safety deposit boxes, or other means,  
 21 the expense of which is a proper charge against the county,  
 22 city, or town.

23 (3) All money derived from interest on sinking fund  
 24 investments as authorized by this section ~~shall~~ must be  
 25 credited by the treasurer of the county or city or the town

1 clerk to the sinking fund for which the investment was  
 2 made."

3 **Section 26.** Section 7-21-2114, MCA, is amended to read:

4 "7-21-2114. Investigation of possible licensing  
 5 violations. ~~It shall be the duty of the~~ The board of county  
 6 commissioners ~~or the department of commerce, when--examining~~  
 7 ~~the--treasurer's report, to shall~~ investigate if whether any  
 8 persons are doing business in the county without a license  
 9 or if the amount of the their license is sufficient  
 10 insufficient. In either event, the treasurer ~~shall~~ must be  
 11 officially notified."

12 **Section 27.** Section 17-6-103, MCA, is amended to read:

13 "17-6-103. Security for deposits of public funds. The  
 14 following kinds of securities may be pledged or guarantees  
 15 may be issued to secure deposits of public funds:

- 16 (1) direct obligations of the United States;
- 17 (2) securities as to which the payment of principal and
- 18 interest is guaranteed by the United States;
- 19 (3) securities issued or fully guaranteed by the
- 20 following agencies of the United States or their successors,
- 21 whether or not guaranteed by the United States:
- 22 (a) commodity credit corporation;
- 23 (b) federal intermediate credit banks;
- 24 (c) federal land bank;
- 25 (d) bank for cooperatives;

1 (e) federal home loan banks;  
 2 (f) federal national mortgage association;  
 3 (g) government national mortgage association;  
 4 (h) small business administration;  
 5 (i) federal housing administration; and  
 6 (j) federal home loan mortgage corporation;  
 7 (4) securities of or other interests in an open-end or  
 8 closed-end management type investment company or investment  
 9 trust registered under the Investment Company Act of 1940  
 10 (15 U.S.C. 80a-1 through 80a-64), as amended, if:  
 11 (a) the portfolio of the investment company or  
 12 investment trust is limited to United States government  
 13 obligations and repurchase agreements fully collateralized  
 14 by United States government obligations; and  
 15 (b) the investment company or investment trust takes  
 16 delivery of the collateral for any repurchase agreement,  
 17 either directly or through an authorized custodian;  
 18 (5) general obligation bonds of the state or of any  
 19 county, city, school district, or other political  
 20 subdivision of the state;  
 21 (6) revenue bonds of any county, city, or other  
 22 political subdivision of the state, when backed by the full  
 23 faith and credit of the subdivision or when the ~~revenues~~  
 24 revenue pledged to the payment of the bonds ~~are~~ is derived  
 25 from a water or sewer system and the issuer has covenanted

1 to establish and maintain rates and charges for the system  
 2 in an amount sufficient to produce ~~revenues~~ revenue equal to  
 3 at least 125% of the average annual principal and interest  
 4 due on all bonds payable from the ~~revenues~~ revenue during  
 5 the outstanding term of the bonds;  
 6 (7) interest-bearing warrants of the state or of any  
 7 county, city, school district, or other political  
 8 subdivision of the state issued in evidence of claims in an  
 9 amount ~~which that~~, with all other claims on the same fund,  
 10 ~~do does~~ not exceed the amount validly appropriated in the  
 11 current budget for expenditure from the fund in the year in  
 12 which they are issued;  
 13 (8) obligations of housing authorities of the state  
 14 secured by a pledge of annual contributions or by a loan  
 15 agreement made by the United States or any agency ~~thereof of~~  
 16 the United States providing for contributions or a loan  
 17 sufficient with other funds pledged to pay the principal of  
 18 and interest on the obligations when due. ~~Subject-to-rules~~  
 19 ~~prescribed-by-the-department-of-commerce-the~~ The bonds and  
 20 other obligations made eligible for investment in  
 21 32-1-424(3)(a) and 7-15-4505 may be used as security for all  
 22 deposits of public funds or obligations for which depository  
 23 bonds or any kind of bonds or other securities are required  
 24 or may by law be deposited as security.  
 25 (9) general obligation bonds of other states and of



municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

**Section 28.** Section 19-18-205, MCA, is amended to read:

"19-18-205. Annual report of secretary and treasurer to association, legislative auditor, and state auditor. The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the

preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. They shall file the report with the association, the ~~department-of-commerce~~ legislative auditor, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed."

**Section 29.** Section 19-18-206, MCA, is amended to read:

"19-18-206. Authority of ~~department--of--commerce~~ legislative auditor -- mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the ~~department--of--commerce~~ legislative auditor or the legislative auditor's designee.

(2) When a complaint is made to the ~~department-of-commerce~~ legislative auditor that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the ~~department~~ legislative auditor shall so report to the governor, upon whose directions to the state auditor no further warrants may not be issued to the association treasurer until the misspent money has been returned."

**Section 30.** Section 20-9-203, MCA, is amended to read:

"20-9-203. Examination of district accounting records. The accounting records of all first-, second-, and third-class school districts must be audited in accordance

with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the ~~department--of commerce legislative auditor~~, the superintendent of public instruction, and the county superintendent."

**Section 31.** Section 61-2-208, MCA, is amended to read:

"61-2-208. Equipment safety commission funds. (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the ~~department---of---commerce~~ legislative auditor is hereby ~~empowered-and~~ authorized to inspect the accounts of the vehicle equipment safety commission."

**Section 32.** Section 85-7-1616, MCA, is amended to read:

"85-7-1616. Required records and audits. (1) ~~It shall be the duty of the~~ The board of control ~~to~~ shall keep or cause to be kept, in the form prescribed by the department of commerce, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) ~~It is hereby made the duty of the~~ The department of commerce ~~to~~ shall prescribe such forms for the use of the board of control ~~and to examine the same as provided by law~~

~~for the examination of the affairs of county offices.~~

(3) The accounting records of a board of control must be audited in accordance with 2-7-503."

**Section 33.** Section 85-7-1913, MCA, is amended to read:

"85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of commerce. The department of commerce shall prescribe forms for the use of irrigation districts ~~and--examine--them-as-provided-by-law-for-the-examination-of the-affairs-of-county-officers.~~ The books and records ~~shall~~ must be open to the inspection of any landowner of the district the same as other public records.

(2) ~~The department--of--commerce--shall---notify---the secretaries--of--the-districts-of-the-time-of-presenting-the books-and-records-at-the-courthouse--for--examination~~ books and records of irrigation districts are subject to audit in accordance with 2-7-503.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any

officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which that are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with this section or 85-7-1914 is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and ~~shall~~ must be paid as are other bills against the ~~districts~~ district."

**Section 34.** Section 17-7-402, MCA, is amended to read:

"17-7-402. **Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend additional federal revenue, additional tuition collected by the Montana university system, additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies, Montana historical society enterprise revenue resulting from sales to the public, additional revenue deposited in funds, other than the general fund,

from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91, or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter, or funds for retirement credit or leave buyouts for personnel transferring to an agency and subsequently retiring or terminated prior to the next fiscal biennium, pursuant to a legislatively authorized reorganization;

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

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

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

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

1 (2) All budget amendments must itemize planned  
2 expenditures by fiscal year.

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

6 (4) Money from nonstate or nonfederal sources that  
7 would be deposited in the state special revenue fund and  
8 that is restricted by law or by the terms of a written  
9 agreement, such as a contract, trust agreement, or donation,  
10 is subject to the review process provided in 17-7-114 and is  
11 exempt from the requirements of this part.

12 (5) An appropriation that would usually be the subject  
13 of a budget amendment that is submitted to the legislature  
14 for approval during a legislative session may not include  
15 authority to spend money beyond the first fiscal year of the  
16 next biennium.

17 (6) A budget amendment to spend state funds, other than  
18 from the general fund, required for matching funds in order  
19 to receive a grant is exempt from the provisions of  
20 subsection (1)."

21 NEW SECTION. **Section 35. Function transfer.** (1) [This  
22 act] is subject to the provisions of 2-15-131, 2-15-132, and  
23 2-15-134 through 2-15-136.

24 (2) [This act] is not subject to the provisions of  
25 2-2-201(1).

1 **Section 36.** Section 28, Chapter 489, Laws of 1991, is  
2 amended to read:

3 "Section 28. ~~interfund--loan--from--the--general--fund~~  
4 Payment of implementation costs. Costs incurred by the  
5 department of commerce during the fiscal year ending June  
6 30, 1992, in adopting rules to implement [this act] and in  
7 preparing for the implementation of [this act], up to the  
8 approved appropriation for this purpose, are to be funded by  
9 ~~an--interfund--loan from the general fund that--must--be--repaid~~  
10 ~~over--a--5--year--period--from--the--revenues--from--the--fitting--fees~~  
11 ~~provided--for--in--{this--act}.~~"

12 NEW SECTION. **Section 37. Local government audit**  
13 **contracts.** Any contract entered into by the department of  
14 commerce may not apply to auditing services to local  
15 governments that are performed by or at the direction of the  
16 legislative auditor.

17 NEW SECTION. **Section 38. Repealer.** Sections 7-6-210  
18 and 85-9-611, MCA, are repealed.

19 NEW SECTION. **Section 39. Effective dates.** (1)  
20 [Sections 1 through 36, 38, and this section] are effective  
21 July 1, 1994.

22 (2) [Section 37] is effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0063, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act transferring local government audit and audit review functions from the Department of Commerce to the Legislative Auditor; modifying local governments records and reporting requirements; expanding allowable exceptions to the budget amendment requirements to include retirement credits and leave buy outs for personnel transferred to an agency pursuant to a legislatively authorized reorganization; amending and repealing certain MCA sections; and providing effective dates.

ASSUMPTIONS:

1. Transfer effective date is July 1, 1994.
2. From the existing 29.00 FTE in the Department of Commerce, 16.50 FTE will be transferred to the Legislative Auditor; 3.50 FTE will remain with the Department of Commerce to provide accounting system services to local governments; and 9.00 FTE will be eliminated. A reduction in the number of local government audits completed by the state allows for the reduction in audit FTE.
3. The \$146,068 general fund appropriation will remain with the Department of Commerce in FY95 to support the local accounting systems program and the unfunded liability (early retirement buyouts and employee unused benefits).
4. The Legislative Auditor's Office will increase the size of the review function and complete more reviews to ensure the quality of the audits completed by local auditors.
5. The database currently maintained in the Department of Commerce by the review function will not be transferred to the Legislative Auditor's Office software until FY96 to allow for appropriate conversion.
6. The 16.50 FTE transferred to the Legislative Auditor will not move from their current physical locations this biennium.
7. The audit and audit review functions will be accounted for in the Legislative Auditor's special revenue fund, not a proprietary account.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Department of Commerce</u>						
<u>Expenditures:</u>						
FTE	29.00	29.00	0	29.00	3.50	(25.50)
Personal Services	946,831	946,831	0	963,411	163,381	(800,030)
3,381 Operating Expense	335,800	335,800	0	346,231	147,414	(198,817)
Equipment	9,321	9,321	0	9,420	0	(9,420)
Transfers	150,620	150,620	0	151,140	146,068	(5,072)
Total	1,442,572	1,442,572	0	1,470,202	456,863	(1,013,339)

(continued on next page)

Dave Lewis 12.8  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Ray Brandewie  
RAY BRANDEWIE, PRIMARY SPONSOR DATE  
Fiscal Note for HB0063, as introduced

HB 63

Fiscal Note Request, HB0063, as introduced  
Form BD-15 page 2  
(continued)

<u>Funding:</u>						
General Fund	144,918	144,918	0	146,068	146,068	0
Proprietary	1,297,654	1,297,654	0	1,324,134	310,795	(1,013,339)
<u>Legislative Auditor</u>						
<u>Expenditures:</u>						
FTE	0	0	0	0	16.50	16.50
Personal Services	0	0	0	0	570,272	570,272
Operating Expenses	0	0	0	0	198,817	198,817
Equipment	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9,420</u>	<u>9,420</u>
Total	0	0	0	0	778,509	778,509
<u>Revenues:</u>						
Audit Fees	0	0	0	0	545,000	545,000
Audit Review Roster Fee	0	0	0	0	2,850	2,850
Report Filing Fee	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>235,000</u>	<u>235,000</u>
Total	0	0	0	0	782,850	782,850
<u>Net Impact:</u>						
FTE	0	0	0	29.00	20.00	(9.00)
Expenditures	0	0	0	1,470,202	1,235,372	(234,830)
General Fund	0	0	0	146,068	146,068	0
State Special	0	0	0	0	778,509	778,509
Proprietary	0	0	0	1,324,134	310,795	(1,013,339)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: The impact on county or other local expenditures should be minimal. However, some local government entities may experience an increase in audit costs if the state no longer bids on their audit.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The Legislative Auditor intends to phase out most of the audit function and consolidate the remaining audit staff in Helena. This will eliminate the option currently available to the local government entities of having the state complete their audit.

TECHNICAL NOTES: The proposed legislation requires the Legislative Auditor to account for the activities of the audit and audit review functions in its special revenue account. House Bill 2, as transmitted to the Senate, contains a contingency clause establishing appropriation authority in a proprietary account. This should be amended to reflect the language of the bill.