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House BILL NO. 193

INTRODUCED BY

AS Hansen

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO ACCESS CERTAIN TRANSACTIONS BETWEEN PUBLIC ENTITIES AND PRIVATE FOUNDATIONS IN ORDER TO ENSURE COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS; AMENDING SECTIONS 5-13-304 AND 18-1-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 5-13-304, MCA, is amended to read:

**"5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever the legislative auditor determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving grants funds or property from or on behalf of the state to determine that the grants funds or property are administered in accordance with the grant applicable terms and conditions. Whenever a state agency enters into an

1 agreement to ~~grant~~ provide resources under its control to others, the agency shall obtain the written  
2 consent of the ~~grantee~~ recipient to the audit provided for in this subsection."

3

4 **Section 2.** Section 18-1-118, MCA, is amended to read:

5 **"18-1-118. Access to records of contracting entities and foundations. (1)** Money may not be  
6 spent by a state agency under a contract with a nonstate entity unless the contract contains a provision  
7 that allows the legislative auditor sufficient access to the records of the nonstate entity to determine  
8 whether the parties have complied with the terms of the contract. The access to records is necessary to  
9 carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract,  
10 without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this  
11 section.

12 **(2)** Money may not be transferred to a private foundation established for the support of a public  
13 entity unless the transfer:

14 (a) allows the legislative auditor sufficient access to the records of the private foundation to allow  
15 compliance with Article VIII, section 12, and Article X, section 9(2)(d), of the Montana constitution; and

16 (b) is subject to a biennial audit by or at the direction of the legislative auditor."

17

18 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1997.

19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0193, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the authority of the legislative auditor to access certain transactions between public entities and private foundations in order to ensure compliance with constitutional requirements; amending sections 5-13-304, and 18-1-118, MCA; and providing an effective date.

ASSUMPTIONS:

1. Audit period covers the two-year biennium since the last audit.
2. Audits will be privatized and performed under third party contract.
3. Legislative Audit Division prepares bid specifications; awarding of bid through the Legislative Audit Committee.
4. Historical administrative expenses associated with contract audit liaison, per contract, are estimated at \$800.
5. Estimated number of affiliated private organizations is twenty-two.
6. One-half of the twenty-two organizations will be audited each fiscal year of the biennium.
7. If the proposed legislation were to be enacted, the private foundations would pay the contract audit fees.

FISCAL IMPACT:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	8,800	8,800
<u>Funding:</u>		
State Special Revenue Fund (02)	8,800	8,800

Dave Lewis 1-14-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

H.S. Hanson  
H.S. "SONNY" HANSON, PRIMARY SPONSOR      DATE

Fiscal Note for HB0193, as introduced

HB 193

APPROVED BY COM ON  
STATE ADMINISTRATION

HOUSE BILL NO. 193

INTRODUCED BY H.S. HANSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO ACCESS CERTAIN TRANSACTIONS BETWEEN PUBLIC ENTITIES AND PRIVATE FOUNDATIONS OR ORGANIZATIONS SUPPORTING THE UNIVERSITY SYSTEM IN ORDER TO ENSURE COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS; AMENDING SECTIONS 5-13-304 AND 18-1-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

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(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving grants funds or property from or on behalf of the state to determine that the grants funds or property are administered in

1 accordance with the ~~grant~~ applicable terms and conditions. Whenever a state agency enters into an  
 2 agreement to ~~grant~~ provide resources under its control to others, the agency shall obtain the written  
 3 consent of the ~~grantee~~ recipient to the audit provided for in this subsection."  
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5 **Section 2.** Section 18-1-118, MCA, is amended to read:

6 **"18-1-118. Access to records of contracting entities and foundations.** (1) Money may not be  
 7 spent by a state agency under a contract with a nonstate entity unless the contract contains a provision  
 8 that allows the legislative auditor sufficient access to the records of the nonstate entity to determine  
 9 whether the parties have complied with the terms of the contract. The access to records is necessary to  
 10 carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract,  
 11 without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this  
 12 section.

13 ~~(2) Money~~ PUBLIC MONEY OR PUBLIC PROPERTY may not be transferred to a private foundation  
 14 OR ORGANIZATION established for the PROMOTION, support, OR ENCOURAGEMENT of a public entity  
 15 THE UNIVERSITY SYSTEM unless the transfer:

16 (a) ~~allows~~ PROVIDES the legislative auditor sufficient access to the records of the private  
 17 foundation OR ORGANIZATION to allow compliance with Article VIII, section 12, and Article X, section  
 18 9(2)(d), of the Montana constitution; and

19 (b) ~~is subject to a biennial audit by or at the direction of~~ PROVIDES the legislative auditor WITH  
 20 ANNUAL FINANCIAL REPORTS THAT INCLUDE AUDITED FINANCIAL STATEMENTS."

21  
 22 **NEW SECTION.** Section 3. **Effective date.** [This act] is effective July 1, 1997.

23 -END-

## 1 HOUSE BILL NO. 193

2 INTRODUCED BY H.S. HANSON

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THIRD READING

1 accordance with the ~~grant~~ applicable terms and conditions. Whenever a state agency enters into an  
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21

22 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1997.

23

24 **NEW SECTION. SECTION 4. TERMINATION.** [THIS ACT] TERMINATES JULY 1, 2001.

25

-END-

## 1 HOUSE BILL NO. 193

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19 ~~(b) is subject to a biennial audit by or at the direction of~~ PROVIDES the legislative auditor WITH  
 20 ANNUAL FINANCIAL REPORTS THAT INCLUDE AUDITED FINANCIAL STATEMENTS.

21 (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2), THIS SECTION DOES NOT  
 22 PERMIT THE LEGISLATIVE AUDITOR TO AUDIT THE FINANCIAL RECORDS OF PRIVATE DONORS TO  
 23 ENTITIES DESCRIBED IN SUBSECTION (2)."

24  
 25 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1997.

26  
 27 NEW SECTION. SECTION 4. TERMINATION. [THIS ACT] TERMINATES JULY 1, 2001.

28 -END-