

1 **House** BILL NO. **240**
 2 INTRODUCED BY Charles Blumenthal
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING STATE AGENCIES AND LOCAL GOVERNMENT
 5 ENTITIES THAT SET AND COLLECT CHARGES FOR SERVICES FROM MAINTAINING IN A FUND
 6 RECEIVING THE CHARGES A CASH BALANCE THAT IS GREATER THAN NECESSARY TO FINANCE THE
 7 SERVICES OF THE AGENCY OR ENTITY FOR MORE THAN 2 YEARS; REQUIRING REDUCTION OF
 8 CHARGES FOR SERVICES IN CERTAIN INSTANCES; PROVIDING DEFINITIONS AND EXCEPTIONS;
 9 REQUIRING REPORTS; AND PROVIDING A DELAYED EFFECTIVE DATE AND A RETROACTIVE
 10 APPLICABILITY DATE."
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12 WHEREAS, some state agencies and local government entities set and collect charges for all or part
 13 of the cost of some public services; and

14 WHEREAS, there is a growing concern that some state agencies and local government entities are
 15 building large reserves in operating revenue due to the amount of charges for services; and

16 WHEREAS, governments must be responsible to the people they serve and always be vigilant not
 17 to charge or retain more in charges for services than is justified by the operating expenses of the
 18 government programs supported by the charges.

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
 22 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], unless the context
 23 requires otherwise, the following definitions apply:

- 24 (1) "Approving authority" means:
- 25 (a) in the case of a state agency, the approving authority as defined in 17-7-102;
- 26 (b) in the case of a local government entity, the local government entity's governing body.
- 27 (2) "Capital project" means the planned and necessary replacement or upgrade of equipment that
 28 is budgeted for by a state agency or a local government entity.
- 29 (3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is
 30 established by state agency rule or local government entity ordinance and that is:

1 (i) charged by the state agency or local government entity to a user of a service provided by the
2 state agency or local government entity;

3 (ii) charged by the state agency or local government entity in exchange for a license, permit, or
4 other type of grant of authority by the state agency or local government entity; or

5 (iii) collected exclusively to provide promotional or marketing services to the person on whom the
6 charge is levied and that is not assessed or collected pursuant to Title 15.

7 (b) For the purposes of [section 2(1) or (3)(a) or 4], the term includes a fee, charge, levy, or other
8 assessment established as provided in subsection (3)(a) and a fee, charge, levy, or other assessment
9 established by statute.

10 (4) "Governing body" means the:

11 (a) board of county commissioners in the case of a county;

12 (b) municipal commission in the case of a municipality;

13 (c) commission in the case of a consolidated government; or

14 (d) town meeting legislative body in the case of a town.

15 (5) "Legislative audit division" means the legislative audit division established by 5-13-301.

16 (6) "Local charge for services fund" or "local fund" means an accounting fund maintained by a local
17 government entity for which the exclusive source of revenue is one or more charges for services or interest
18 or other income on the fund.

19 (7) "Local government entity" means a county, city, consolidated government, or town.

20 (8) "Operating plan" means the financial plan used by a state agency or local government entity
21 showing in detail the purposes for which the state agency's or local government entity's operating revenue
22 will be spent in the current fiscal year of the state agency or local government entity and the fund from
23 which the expenditures will be made.

24 (9) "State agency" means an agency as defined in 17-7-102.

25 (10) "State charge for services fund" or "state fund" means an account within the special revenue
26 fund established by 17-2-102 for which the exclusive source of revenue is one or more charges for services
27 or interest or other income on the fund.

28
29 **NEW SECTION. Section 2. Limitation on balance in state or local charge for services fund --**
30 **exceptions -- audits.** (1) Except as provided in this section, a state agency that deposits money into a

1 state charge for services fund or a local government entity that deposits money into a local charge for
2 services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for
3 that year or greater than the biennial appropriation from the account for the biennium, which includes that
4 year from the state fund or local fund as shown in the state agency's or local government entity's initial
5 operating plan.

6 (2) A state agency may maintain more money in a state fund or a local government entity may
7 maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the
8 state agency certifies to the legislative finance committee, established by 5-12-2011, or the manager of the
9 service or function of the local government entity using money in a local fund certifies to the governing
10 body of that entity:

11 (a) the date on which the state fund or local fund balance exceeded the limitation provided in
12 subsection (1);

13 (b) the amount of money by which the state fund or local fund balance exceeded the limitation
14 provided in subsection (1);

15 (c) the amount of money usually needed in the state fund or local fund for the operation of the
16 service or function of the state agency or local government entity for 1 year, along with supporting facts;

17 (d) whether the amount of money within the state fund or local fund that is in excess of the
18 limitation provided in subsection (1) is necessary for the operation of the service or function of the state
19 agency or local government entity because of:

20 (i) an emergency;

21 (ii) an unusual circumstance; or

22 (iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

23 (e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation
24 claimed in subsection (2)(d).

25 (3) The legislative audit division shall include in financial audits performed by or at the direction
26 of the legislative audit division and an independent auditor shall include in an audit performed by the
27 independent auditor pursuant to Title 2, chapter 7, part 5, a determination of whether money is or has been
28 retained in a state charge for services fund or in a local charge for services fund contrary to the
29 requirements of:

30 (a) this section; or

1 (b) [section 3].

2 (4) Except as otherwise provided in [section 1(3)(b)], this section does not apply to:

3 (a) a charge for services made by one state agency to another state agency or by one local
4 government entity to another local government entity;

5 (b) a state charge for services fund or a local charge for services fund used only for replacement
6 of buildings or to pay the costs of other future capital projects;

7 (c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute; or

8 (d) charges for services deposited in accordance with law into:

9 (i) the state general fund;

10 (ii) a county general fund; or

11 (iii) a city, town, or consolidated government general fund.

12

13 **NEW SECTION. Section 3. Reduction of charge required.** A state agency that maintains a cash
14 balance in a state charge for services fund or a local government entity that maintains a cash balance in
15 a local charge for services fund contrary to the limitation provided in [section 2(1)] for more than 60 days
16 shall, within 90 days after the end of the 60-day period, reduce the charge for services or, in the case of
17 a state fund or local fund into which two or more charges for service are deposited, reduce one or more
18 charges for services specified by the state agency or local government entity until the cash balance in the
19 state fund or local fund complies with the limitation in [section 2(1)].

20

21 **NEW SECTION. Section 4. Reports required.** (1) The approving authority for a state agency shall
22 annually report in writing to the legislative finance committee by August 1:

23 (a) each state agency that had a cash balance in a state charge for services fund contrary to the
24 limitation provided in [section 2(1)] during the previous 12 months;

25 (b) the facts certified for each state agency by the approving authority pursuant to [section 2(2)];

26 (c) each state agency that has complied with the requirements of [section 3] and the circumstances
27 of the agency's compliance; and

28 (d) each state agency that has not complied with [section 3] and the circumstances of the agency's
29 noncompliance.

30 (2) The director of the department of commerce shall report to the legislature at the time and in

1 the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge
2 for services fund contrary to the limitation provided by [section 2(1)], that failed to reduce the charge as
3 provided in [section 3], or both, during the previous 12 months.

4
5 NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, to charges for services, as defined in [section 1], collected prior to [the effective date
7 of this act].

8

9 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 1998.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0240, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting state agencies and local government entities that set and collect charges for services from maintaining in a fund receiving the charges a cash balance that is greater than necessary to finance the services of the agency or entity for more than 2 years; requiring reduction of charges for services in certain instances; providing definitions and exceptions; requiring reports; and providing a delayed effective date and a retroactive applicability date.

ASSUMPTIONS:

1. The bill has an effective date of July 1, 1998.
2. Proprietary and internal service funds do not fall under provisions of this bill.
3. Fees set by statute are exempt.
4. The legislation does not apply to revolving funds and grant/loan funds where administrative fees are commingled with other sources of revenue.
5. Divisions accruing fees would prepare necessary certifications for exceptions and would absorb the costs of preparing certifications.
6. The Legislative Audit Division will report documented certifications for maintaining more money in a state fund than is allowed from state agencies to the Legislative Finance Committee and make the report available upon request.
7. The increase in workload will have no fiscal impact on the Legislative Audit Division.
8. Rulemaking required to implement the provisions of this bill would include the minimal publication costs for notice pages and would be accrued by the department.

Department of Commerce

POL Bureau:

9. The projections of cash balances below are for the administratively-attached boards and occupational licensing programs potentially impacted by the proposed legislation in the Department of Commerce, Professional and Occupational Licensing Bureau for the 1999 biennium.
10. It is assumed the modifications and adjustments to the present law base as contained in the Executive Budget request for the 1999 biennium are approved by the Legislature.
11. It is assumed there will be no changes by any of the administratively-attached boards and occupational licensing programs from those currently in effect.


FISCAL IMPACT:

Department of Commerce, POL Bureau:

POL Bureau SSR Fund Balances:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Rad. Technologists (SSR)	0	55,750
Resp. Care Practitioners (SSR)	0	48,427
Chiropractors (SSR)	0	13,324
Optometry (SSR)	0	25,127
Professional Engineers (SSR)	0	160,638
Sanitarians (SSR)	0	11,357
Landscape Architects (SSR)	0	12,073
Speech Pathologists (SSR)	0	18,119
Plumbers (SSR)	0	88,345
Clinical Lab Science (SSR)	<u>0</u>	<u>52,053</u>
Total	0	485,213

(Continued)


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

CHARLES DEVANEY, PRIMARY SPONSOR DATE

Fiscal Note for HB0240, as introduced

HB 240

<u>Net Impact on Fund Balance:</u>	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
State Special Revenue (02)	0	(485,213)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Department of Commerce, Local Government Assistance Division: Normally, when audits are performed by independent auditors, they examine the entities internal controls and apply materiality criteria to determine the scope of their testing. The specific testing as required by Section 2(3) of the proposed legislation mandates that more work be performed by the auditor than under a routine audit and this additional work would be reflected in higher audit fees to the audited governmental entity. The Department of Commerce is unable to quantify the increased costs to local governmental entities.

The proposed legislation requires that a report be filed with the legislature that lists each local governmental entity that violates Section 2(1) or Section 3, or both, in the previous 12 months. Under the provisions of 2-7-503(3)(A), MCA, a local government which is required to have an audit must have at least a biennial audit which must cover the preceding two fiscal years. The audit must be submitted to the Department of Commerce within the one year from the close of the last fiscal year covered by the audit. Subsequently, violations within the last 12 months before the legislature is due would not likely be covered in the audit reports.

The proposed legislation **may** require local governmental entities to incur additional costs for which no specific means of financing are provided. Section 1-2-114, MCA, provides that bills which have such an impact not be introduced.

TECHNICAL NOTES:

Department of Commerce, Local Government Assistance Division:

1. Section 1(6): Most local governments do not maintain a specific accounting fund for charges for services but credit revenues from charges for services to various governmental or enterprise funds as appropriate. Upon the deposit of revenues within a fund, they are "commingled" with other revenues deposited into the fund and normally lose their identity. However, by assigning optional program, job, or department codes to revenues and their expenditures, cash balances can be determined for a particular source of revenue.
2. Section 2(2): A local government enterprise fund may have restricted cash accounts required by ordinance or bond resolution for an outstanding revenue bond. Section 2(d) might be expanded to include restricted cash accounts required by ordinance or resolution.
3. Department of Commerce, POL Bureau: Since the State Electrical Board has a triennial licensing renewal system, they will qualify for an exception based upon the unusual circumstance criteria.
4. Programs with annual assessments or with fees established in rule by a board that meets infrequently may not be able to comply with Section 3.

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29 entity.

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6 (iii) collected exclusively to provide promotional or marketing services to the person on whom the
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1 **exceptions -- audits.** (1) Except as provided in this section, a state agency that deposits money into a
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3 services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for
4 that year or greater than the biennial appropriation from the account for the biennium, which includes that
5 year from the state fund or local fund as shown in the state agency's or local government entity's initial
6 operating plan.

7 (2) A state agency may maintain more money in a state fund or a local government entity may
8 maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the
9 state agency certifies to the legislative finance committee, established by 5-12-201, or the manager of the
10 service or function of the local government entity using money in a local fund certifies to the governing
11 body of that entity:

12 (a) the date on which the state fund or local fund balance exceeded the limitation provided in
13 subsection (1);

14 (b) the amount of money by which the state fund or local fund balance exceeded the limitation
15 provided in subsection (1);

16 (c) the amount of money usually needed in the state fund or local fund for the operation of the
17 service or function of the state agency or local government entity for 1 year, along with supporting facts;

18 (d) whether the amount of money within the state fund or local fund that is in excess of the
19 limitation provided in subsection (1) is necessary for the operation of the service or function of the state
20 agency or local government entity because of:

21 (i) an emergency;

22 (ii) ~~an~~ A SPECIAL OR unusual circumstance; or

23 (iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

24 (e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation
25 claimed in subsection (2)(d).

26 (3) The legislative audit division shall include in financial audits performed by or at the direction
27 of the legislative audit division and an independent auditor shall include in an audit performed by the
28 independent auditor pursuant to Title 2, chapter 7, part 5, a determination of whether money is or has been
29 retained in a state charge for services fund or in a local charge for services fund contrary to the
30 requirements of:

1 (a) this section; or

2 (b) [section 3].

3 (4) Except as otherwise provided in [section 1(3)(b)], this section does not apply to:

4 (a) a charge for services made by one state agency to another state agency or by one local
5 government entity to another local government entity;

6 (b) a state charge for services fund or a local charge for services fund used only for replacement
7 of buildings or to pay the costs of other future capital projects;

8 (c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute; ~~or~~

9 (D) FEES, CHARGES, AND PAYMENTS ESTABLISHED PURSUANT TO THE REVOLVING FUND

10 PROGRAMS CREATED BY AND ADMINISTERED PURSUANT TO TITLE 75, CHAPTER 5, PART 11, AND

11 TITLE 75, CHAPTER 6, PART 2; OR

12 ~~(E)~~ charges for services deposited in accordance with law into:

13 (I) A DEBT SERVICE OR BOND RESERVE FUND;

14 ~~(II)~~ the state general fund;

15 ~~(III)~~ a county general fund; or

16 ~~(IV)~~ a city, town, or consolidated government general fund.

17

18 **NEW SECTION. Section 3. Reduction of charge required.** A state agency that maintains a cash
19 balance in a state charge for services fund or a local government entity that maintains a cash balance in
20 a local charge for services fund contrary to the limitation provided in [section 2(1)] for more than 60 days
21 shall, within ~~90~~ 120 days after the end of the 60-day period, reduce the charge for services or, in the case
22 of a state fund or local fund into which two or more charges for service are deposited, reduce one or more
23 charges for services specified by the state agency or local government entity until the cash balance in the
24 state fund or local fund complies with the limitation in [section 2(1)].

25

26 **NEW SECTION. Section 4. Reports required.** (1) The approving authority for a state agency shall
27 annually report in writing to the legislative finance committee by August 1:

28 (a) each state agency that had a cash balance in a state charge for services fund contrary to the
29 limitation provided in [section 2(1)] during the previous 12 months;

30 (b) the facts certified for each state agency by the approving authority pursuant to [section 2(2)];

1 (c) each state agency that has complied with the requirements of [section 3] and the circumstances
2 of the agency's compliance; and

3 (d) each state agency that has not complied with [section 3] and the circumstances of the agency's
4 noncompliance.

5 (2) The director of the department of commerce shall report to the legislature at the time and in
6 the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge
7 for services fund contrary to the limitation provided by [section 2(1)], that failed to reduce the charge as
8 provided in [section 3], or both, during the previous 12 months.

9
10 **NEW SECTION.** **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
11 meaning of 1-2-109, to charges for services, as defined in [section 1], collected prior to [the effective date
12 of this act].

13

14 **NEW SECTION.** **Section 6. Effective date.** [This act] is effective July 1, 1998.

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-END-

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HOUSE BILL NO. 240

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WHEREAS, some state agencies and local government entities set and collect charges for all or part of the cost of some public services; and

WHEREAS, there is a growing concern that some state agencies and local government entities are building large reserves in operating revenue due to the amount of charges for services; and

WHEREAS, governments must be responsible to the people they serve and always be vigilant not to charge or retain more in charges for services than is justified by the operating expenses of the government programs supported by the charges.

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

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30 (3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is

1 established by state agency rule or local government entity ordinance and that is:

2 (i) charged by the state agency or local government entity to a user of a service provided by the
3 state agency or local government entity;

4 (ii) charged by the state agency or local government entity in exchange for a license, permit, or
5 other type of grant of authority by the state agency or local government entity; or

6 (iii) collected exclusively to provide promotional or marketing services to the person on whom the
7 charge is levied and that is not assessed or collected pursuant to Title 15.

8 (b) For the purposes of [section 2(1) or (3)(a) or 4], the term includes a fee, charge, levy, or other
9 assessment established as provided in subsection (3)(a) and a fee, charge, levy, or other assessment
10 established by statute.

11 (4) "Governing body" means the:

12 (a) board of county commissioners in the case of a county;

13 (b) municipal commission in the case of a municipality;

14 (c) commission in the case of a consolidated government; or

15 (d) town meeting legislative body in the case of a town.

16 (5) "Legislative audit division" means the legislative audit division established by 5-13-301.

17 (6) "Local charge for services fund" or "local fund" means an accounting fund maintained by a local
18 government entity for which the exclusive source of revenue is one or more charges for services or interest
19 or other income on the fund.

20 (7) "Local government entity" means a county, city, consolidated government, or town.

21 (8) "Operating plan" means the financial plan used by a state agency or local government entity
22 showing in detail the purposes for which the state agency's or local government entity's operating revenue
23 will be spent in the current fiscal year of the state agency or local government entity and the fund from
24 which the expenditures will be made.

25 (9) "State agency" means an agency as defined in 17-7-102.

26 (10) "State charge for services fund" or "state fund" means an account within the special revenue
27 fund established by 17-2-102 for which the exclusive source of revenue is one or more charges for services
28 or interest or other income on the fund.

29

30 **NEW SECTION. Section 2. Limitation on balance in state or local charge for services fund --**

1 **exceptions -- audits.** (1) Except as provided in this section, a state agency that deposits money into a
2 state charge for services fund or a local government entity that deposits money into a local charge for
3 services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for
4 that year or greater than the biennial appropriation from the account for the biennium, which includes that
5 year from the state fund or local fund as shown in the state agency's or local government entity's initial
6 operating plan.

7 (2) A state agency may maintain more money in a state fund or a local government entity may
8 maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the
9 state agency certifies to the legislative finance committee, established by 5-12-201, or the manager of the
10 service or function of the local government entity using money in a local fund certifies to the governing
11 body of that entity:

12 (a) the date on which the state fund or local fund balance exceeded the limitation provided in
13 subsection (1);

14 (b) the amount of money by which the state fund or local fund balance exceeded the limitation
15 provided in subsection (1);

16 (c) the amount of money usually needed in the state fund or local fund for the operation of the
17 service or function of the state agency or local government entity for 1 year, along with supporting facts;

18 (d) whether the amount of money within the state fund or local fund that is in excess of the
19 limitation provided in subsection (1) is necessary for the operation of the service or function of the state
20 agency or local government entity because of:

21 (i) an emergency;

22 (ii) ~~an~~ A SPECIAL OR unusual circumstance; or

23 (iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

24 (e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation
25 claimed in subsection (2)(d).

26 (3) The legislative audit division shall include in financial audits performed by or at the direction
27 of the legislative audit division and an independent auditor shall include in an audit performed by the
28 independent auditor pursuant to Title 2, chapter 7, part 5, a determination of whether money is or has been
29 retained in a state charge for services fund or in a local charge for services fund contrary to the
30 requirements of:

1 (a) this section; or

2 (b) [section 3].

3 (4) Except as otherwise provided in [section 1(3)(b)], this section does not apply to:

4 (a) a charge for services made by one state agency to another state agency or by one local
5 government entity to another local government entity;

6 (b) a state charge for services fund or a local charge for services fund used only for replacement
7 of buildings or to pay the costs of other future capital projects;

8 (c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute; ~~or~~

9 (D) FEES, CHARGES, AND PAYMENTS ESTABLISHED PURSUANT TO THE REVOLVING FUND
10 PROGRAMS CREATED BY AND ADMINISTERED PURSUANT TO TITLE 75, CHAPTER 5, PART 11, AND
11 TITLE 75, CHAPTER 6, PART 2; OR

12 ~~(E)~~ charges for services deposited in accordance with law into:

13 (I) A DEBT SERVICE OR BOND RESERVE FUND;

14 ~~(II)~~ the state general fund;

15 ~~(III)~~ a county general fund; or

16 ~~(IV)~~ a city, town, or consolidated government general fund.

17

18 NEW SECTION. Section 3. Reduction of charge required. A state agency that maintains a cash
19 balance in a state charge for services fund or a local government entity that maintains a cash balance in
20 a local charge for services fund contrary to the limitation provided in [section 2(1)] for more than 60 days
21 shall, within ~~90~~ 120 days after the end of the 60-day period, reduce the charge for services or, in the case
22 of a state fund or local fund into which two or more charges for service are deposited, reduce one or more
23 charges for services specified by the state agency or local government entity until the cash balance in the
24 state fund or local fund complies with the limitation in [section 2(1)].

25

26 NEW SECTION. Section 4. Reports required. (1) The approving authority for a state agency shall
27 annually report in writing to the legislative finance committee by August 1:

28 (a) each state agency that had a cash balance in a state charge for services fund contrary to the
29 limitation provided in [section 2(1)] during the previous 12 months;

30 (b) the facts certified for each state agency by the approving authority pursuant to [section 2(2)];

1 (c) each state agency that has complied with the requirements of [section 3] and the circumstances
2 of the agency's compliance; and

3 (d) each state agency that has not complied with [section 3] and the circumstances of the agency's
4 noncompliance.

5 (2) The director of the department of commerce shall report to the legislature at the time and in
6 the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge
7 for services fund contrary to the limitation provided by [section 2(1)], that failed to reduce the charge as
8 provided in [section 3], or both, during the previous 12 months.

9
10 **NEW SECTION. Section 5. Retroactive applicability.** [This act] applies retroactively, within the
11 meaning of 1-2-109, to charges for services, as defined in [section 1], collected prior to [the effective date
12 of this act].

13

14 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 1998.

15

-END-