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INTRODUCED BY Senators Senators BILL NO. 238

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING STATE AGENCIES THAT SET AND COLLECT CHARGES FOR SERVICES FROM MAINTAINING IN AN ACCOUNT RECEIVING THE CHARGES A CASH BALANCE THAT IS GREATER THAN NECESSARY TO FINANCE THE SERVICES OF THE AGENCY 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."

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WHEREAS, some state agencies set and collect charges to finance all or part of the cost of some public services; and

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WHEREAS, there is a growing concern that some state agencies are building large reserves in operating revenue because of the amount of these charges for services; and

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WHEREAS, governments must be responsible to the people whom they serve and must 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.

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

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NEW SECTION. Section 1. Definitions. Unless the context requires otherwise, the following definitions apply to [sections 1 through 4]:

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23

(1) "Approving authority" means the approving authority as defined in 17-7-102.

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(2) "Capital project" means the planned and necessary replacement or upgrade of equipment that is budgeted for by a state agency.

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(3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is established by state agency rule and that is:

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(i) charged by the state agency to a user of a service provided by the state agency;

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(ii) charged by the state agency in exchange for a license, permit, or other type of authority granted

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by the state agency; or

1 (iii) collected exclusively to provide promotional, marketing, or other services to the persons from
2 whom the charge is collected and that is not assessed and collected pursuant to Title 15.

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

6 (4) "Charge for services account" or "account" means an account within the state special revenue
7 fund created by 17-2-102, the exclusive source of revenue for which is one or more charges for services
8 or interest or other income on the account.

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

10 (6) "Operating plan" means the financial plan used by a state agency showing in detail the
11 purposes for which the state agency's operating revenue will be spent in the current fiscal year of the state
12 agency and the account from which the expenditures will be made.

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

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15 **NEW SECTION. Section 2. Limitation on balance in charge for services account -- exceptions --**
16 **audits.** (1) Except as provided in this section, a state agency that deposits money into a charge for
17 services account may not maintain a cash balance in the account greater than twice the annual
18 appropriation for that year or greater than the biennial appropriation from the account for the biennium,
19 which includes that year as shown in the state agency's initial operating plan.

20 (2) A state agency may maintain more money in a charge for services account than is allowed by
21 subsection (1) if the approving authority for the state agency certifies to the legislative finance committee
22 established by 5-12-201:

23 (a) the date on which the account balance exceeded the limitation provided in subsection (1);

24 (b) the amount of money by which the account balance exceeded the limitation provided in
25 subsection (1);

26 (c) the amount of money usually needed for the operation of the service or function of the state
27 agency for 1 year, along with supporting facts;

28 (d) whether the amount of money within the account that is in excess of the limitation provided
29 in subsection (1) is necessary for the operation of the service or function of the state agency because of:

30 (i) an emergency;

1 (ii) an unusual circumstance; or

2 (iii) a fluctuation in the services, function, or charges for services of the state agency; and

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

5 (3) The legislative audit division shall include in financial audits performed by or at the direction
6 of the legislative audit division a determination of whether money is or has been retained in a charge for
7 services account contrary to the requirements of:

8 (a) this section; or

9 (b) [section 3].

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

11 (a) a charge for services made by one state agency to another state agency;

12 (b) a charge for services account maintained by a state agency only for the purposes of
13 replacement of buildings or to pay the costs of other future capital projects;

14 (c) an account used for the deposit of both one or more charges for services and money from
15 another source other than interest earnings on the account; or

16 (d) charges for services deposited in the state general fund.

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

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

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

29 (2) the facts certified by the approving authority pursuant to [section 2(2)];

30 (3) each state agency that has complied with the requirements of [section 3] and the circumstances

1 of its compliance; and

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

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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].

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

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0238, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting state agencies that set and collect charges for services from maintaining in an account receiving the charges a cash balance that is greater than necessary to finance the services of the agency 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 not require the Legislative Audit Division to add FTE or increase spending authority.
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:

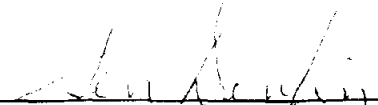
9. The projections of cash balances below are for the administratively-attached boards and occupational licensing programs potentially impacted by the proposed legislation in the Department of Commerce, Professional and Occupational Licensing Bureau for the 1999 biennium.
10. It is assumed the modifications 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.

Department of Natural Resources and Conservation:

12. When the EPA stops capitalizing the State Revolving Fund Program, the state will be responsible to pay the administrative cost of the program. The SRF program, which finances wastewater construction, requires that as the 20 year loans are paid back 75% of the interest rate charged on the loans go to an administrative account.
13. The DNRC is directed by the EPA to keep this program operating into perpetuity and the proposed law might jeopardize this provision.

(Continued)

 2.3.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/4/97
GERRY DEVLIN, PRIMARY SPONSOR DATE

Fiscal Note for SB0238, as introduced

SB 238

(continued)

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

Net Impact on Fund Balance:

State Special Revenue (02)	0	(485,213)
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TECHNICAL NOTES:

1. Because the State Electrical Board has a triennial renewal, they will qualify for an exception based on an unusual circumstance.
2. The title and the requirements of this bill conflict. The title indicates that it applies to charges that the agency sets. However, the definition of "charge for services" includes charges established by statute.
3. Sections 1(3)(b) and 2(1) prohibit an agency from maintaining a cash balance of fees established in statute that is greater than the biennial appropriation or twice the annual appropriation for the agency from that account. However, other statutes require the agencies to deposit these funds in these accounts. If an agency receives statutorily established fees in an amount that would cause it to exceed one of these limits, it must either violate section 2(1) or the statute that requires the deposit of the fees.
4. This bill is almost identical to HB 240.

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INTRODUCED BY *DeWalt* Senate BILL NO. 238

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING STATE AGENCIES THAT SET AND COLLECT CHARGES FOR SERVICES FROM MAINTAINING IN AN ACCOUNT RECEIVING THE CHARGES A CASH BALANCE THAT IS GREATER THAN NECESSARY TO FINANCE THE SERVICES OF THE AGENCY 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."

WHEREAS, some state agencies set and collect charges to finance all or part of the cost of some public services; and

WHEREAS, there is a growing concern that some state agencies are building large reserves in operating revenue because of the amount of these charges for services; and

WHEREAS, governments must be responsible to the people whom they serve and must 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:

NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, the following definitions apply to [sections 1 through 4]:

(1) "Approving authority" means the approving authority as defined in 17-7-102.

(2) "Capital project" means the planned and necessary replacement or upgrade of equipment that is budgeted for by a state agency.

(3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is established by state agency rule and that is:

(i) charged by the state agency to a user of a service provided by the state agency;

(ii) charged by the state agency in exchange for a license, permit, or other type of authority granted by the state agency; or

1 (iii) collected exclusively to provide promotional, marketing, or other services to the persons from
2 whom the charge is collected and that is not assessed and collected pursuant to Title 15.

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

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7 fund created by 17-2-102, the exclusive source of revenue for which is one or more charges for services
8 or interest or other income on the account.

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

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11 purposes for which the state agency's operating revenue will be spent in the current fiscal year of the state
12 agency and the account from which the expenditures will be made.

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18 appropriation for that year or greater than the biennial appropriation from the account for the biennium,
19 which includes that year as shown in the state agency's initial operating plan.

20 (2) A state agency may maintain more money in a charge for services account than is allowed by
21 subsection (1) if the approving authority for the state agency certifies to the legislative finance committee
22 established by 5-12-201:

23 (a) the date on which the account balance exceeded the limitation provided in subsection (1);

24 (b) the amount of money by which the account balance exceeded the limitation provided in
25 subsection (1);

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27 agency for 1 year, along with supporting facts;

28 (d) whether the amount of money within the account that is in excess of the limitation provided
29 in subsection (1) is necessary for the operation of the service or function of the state agency because of:

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INTRODUCED BY Sen. [Signature] Senate BILL NO. 238

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