

1 INTRODUCED BY Beck Senate BILL NO. 308  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO  
 5 PREPARE A WRITTEN STATEMENT OF NEEDS AND LEGAL AUTHORITY BEFORE TAKING CERTAIN  
 6 ACTION; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS; CREATING AN  
 7 OFFENSE; AMENDING SECTION 7-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
 8 AN APPLICABILITY DATE."

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

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 12 **NEW SECTION. Section 1. Short title.** [Sections 1 through 5] may be cited as the "Government  
 13 Accountability Act".

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 15 **NEW SECTION. Section 2. Findings and purpose.** (1) The legislature finds that there have been  
 16 instances in which decisions made by government entities exceed, or appear to exceed, the legal authority  
 17 of the government entity. In some instances, sufficient legal authority exists for a particular government  
 18 action but a government employee may not know of the authority or for some reason does not disclose the  
 19 authority to the person affected by the government action. Because the power of government comes  
 20 ultimately from the people served by the government, it is appropriate that government should not act  
 21 without knowing what power is being exercised on behalf of the people. Therefore, the legislature finds  
 22 that there is a need for government entities to make known the legal authority under which they act and  
 23 to make known the factual basis for their action as well.

24 (2) The purpose of [sections 1 through 5] is to require government entities to make known their  
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 30 in government, and by helping to identify deficiencies in the law so that those deficiencies may be

1 addressed by legislative action. For these purposes, [sections 1 through 5] must be liberally construed.

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3 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], the following definitions  
4 apply:

5 (1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as  
6 distinguished from a general interest, that has been adversely affected.

7 (2) (a) "Government act" means:

8 (i) the denial or issuance with conditions of a permit, certificate, license, or other written authority  
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10 (ii) the refusal by a government entity to allow action proposed by a person other than through the  
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12 (iii) a request or demand by a government entity that a person not take or cease taking a particular  
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14 (b) The term does not mean:

15 (i) litigation in which a government entity or other person litigates the authority of the government  
16 entity to take an act provided in subsection (2)(a); or

17 (ii) an act provided in subsection (2)(a) for which a citation or other written document is issued,  
18 other than the statement required by [section 4], on which a reference clearly appears to the legal authority  
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20 (3) "Government employee" means:

21 (a) an individual elected or appointed to an office of a government entity; or

22 (b) a permanent or temporary full-time or part-time employee of a government entity.

23 (4) "Government entity" means a state agency or a local government unit.

24 (5) "Local government unit" means a city, county, town, unincorporated municipality or village,  
25 or special taxing unit or district and any commission, board, bureau, or other office of the unit.

26 (6) "Rule" has the meaning provided in 2-4-102.

27 (7) "State agency" has the meaning provided in 2-4-102(2)(a).

28 (8) "Statement of government needs and authority" or "statement" means the statement required  
29 by [section 4].

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1           **NEW SECTION. Section 4. Statement of government needs and authority required.** (1) A  
 2 government entity may not take a government act without first issuing to the person or persons directly  
 3 and substantially affected by the government act a written statement of government needs and authority  
 4 prepared as provided in this section.

5           (2) The statement must clearly:

6           (a) identify in detail the factual basis or reason for the government act;

7           (b) cite the statute, rule, ordinance, or other legal authority for the government act and explain how  
 8 the legal authority is interpreted by the government entity so as to authorize the government act; and

9           (c) provide information about any appeal or other process by which a person aggrieved by the  
 10 government act may seek relief from the government act.

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12           **NEW SECTION. Section 5. Civil action for damages authorized -- misdemeanor -- penalty.** (1) A  
 13 person aggrieved by a government act may bring a civil action for damages, in district court in the county  
 14 in which a government entity has an office, against a government entity that takes a government act  
 15 without legal authority, in violation of its legal authority, or that is otherwise arbitrary, capricious, or an  
 16 abuse of discretion. Damages are the greater of actual damages or \$1,000. If damages are awarded, the  
 17 court shall also award the person's costs and reasonable attorney fees.

18           (2) A government entity that willfully or negligently fails to issue a statement of government needs  
 19 and authority as required by [section 4] may be fined not less than \$500 or more than \$1,000.

20           (3) A government employee who willfully or negligently fails to issue a statement of government  
 21 needs and authority as required by [section 4] is guilty of a misdemeanor and may be fined not less than  
 22 \$500 or more than \$1,000, imprisoned for not more than 1 year, or both.

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24           **Section 6.** Section 7-1-106, MCA, is amended to read:

25           **"7-1-106. Construction of self-government powers.** The powers and authority of a local  
 26 government unit with self-government powers ~~shall~~ must be ~~liberally~~ reasonably construed. ~~Every~~  
 27 ~~reasonable doubt as to the existence of a local government power or authority shall be resolved in favor~~  
 28 ~~of the existence of that power or authority."~~

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30           **NEW SECTION. Section 7. Applicability.** [This act] applies to a government act as defined by

1 [section 3] taken after [the effective date of this act].

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3 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

4

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0308, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring state and local government entities to prepare a written statement of needs and legal authority before taking certain action.

ASSUMPTIONS:

1. Twenty-six agencies responded to a request for a fiscal note. The following assumptions represent a compilation of the remarks made by those 26.
2. All 26 agencies agree that implementation of the bill, mainly due to its broadness, will drastically increase caution on the part of government, and this caution will translate into delays in the functioning of state and local government. Employees could possibly delay making a decision (even though their answer would be correct), for fear of personally paying a fine or going to jail.
3. Most respondents anticipate increased litigation costs due to this bill, but cannot estimate with any degree of accuracy, a dollar amount.
4. Sixteen agencies currently consider themselves essentially in compliance with the intent of the bill. And although they anticipate expansion of their duties with the passage of SB 308, they believe it can be absorbed into their current staff.
5. Seven agencies anticipate a fiscal impact, ranging from small to potentially large, but they cannot quantify an accurate estimate. Most of their concerns center around increased litigation costs.
6. The University System believes that the bill may cause sufficient workload to justify additional FTE, but without additional interpretation is unable to define a definite need.
7. The remaining two agencies believe that the bill will require additional staff to handle the increased workload. They are: 1) Commissioner of Political Practices - 1 grade 9, administrative aide, funded by the general fund; and 2) Transportation - 10, grade 14, attorneys, funded 74% state special and 26% federal special.

FISCAL IMPACT:

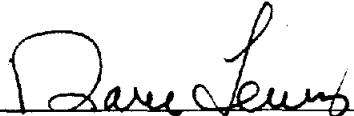
	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	11.00	11.00
Personal services	\$340,300	\$340,300
Operating expenses	<u>34,000</u>	<u>34,000</u>
Total	\$374,300	\$374,300
 <u>Funding:</u>		
General fund (01)	\$24,200	\$24,200
State special (02)	259,000	259,000
Federal special (03)	<u>91,100</u>	<u>91,100</u>
Total	\$374,300	\$374,300

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments may experience some fiscal impact as a result of this bill. Probably ranging from nothing to potentially requiring an FTE.

TECHNICAL NOTES:

1. SB 308 amends 7-1-106, MCA, providing that the powers and authority of local governments must be "reasonably" construed. Article XI, section 4(2) of the Montana Constitution provides that the powers of local government shall be "liberally" construed. The proposed change appears to conflict with the Constitution.

 2-13-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

\_\_\_\_\_  
 TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0308, as introduced

**SB 308**

APPROVED BY COM ON  
LOCAL GOVERNMENT

SENATE BILL NO. 308

INTRODUCED BY BECK, STANG

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO PREPARE A WRITTEN STATEMENT OF NEEDS AND LEGAL AUTHORITY BEFORE TAKING CERTAIN ACTION; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS; CREATING AN OFFENSE; ~~AMENDING SECTION 7-1-106, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

THE LEGISLATURE FINDS THAT THERE HAVE BEEN INSTANCES IN WHICH DECISIONS MADE BY GOVERNMENT ENTITIES EXCEED, OR APPEAR TO EXCEED, THE LEGAL AUTHORITY OF THE GOVERNMENT ENTITY. IN SOME INSTANCES, SUFFICIENT LEGAL AUTHORITY EXISTS FOR A PARTICULAR GOVERNMENT ACTION BUT A GOVERNMENT EMPLOYEE MAY NOT KNOW OF THE AUTHORITY OR FOR SOME REASON DOES NOT DISCLOSE THE AUTHORITY TO THE PERSON AFFECTED BY THE GOVERNMENT ACTION. BECAUSE THE POWER OF GOVERNMENT COMES ULTIMATELY FROM THE PEOPLE SERVED BY THE GOVERNMENT, IT IS APPROPRIATE THAT GOVERNMENT SHOULD NOT ACT WITHOUT KNOWING WHAT POWER IS BEING EXERCISED ON BEHALF OF THE PEOPLE. THEREFORE, THE LEGISLATURE FINDS THAT THERE IS A NEED FOR GOVERNMENT ENTITIES TO MAKE KNOWN THE LEGAL AUTHORITY UNDER WHICH THEY ACT AND TO MAKE KNOWN THE FACTUAL BASIS FOR THEIR ACTION AS WELL.

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NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Government Accountability Act".

NEW SECTION. **Section 2. Findings and purpose.** ~~(1) The legislature finds that there have been instances in which decisions made by government entities exceed, or appear to exceed, the legal authority of the government entity. In some instances, sufficient legal authority exists for a particular government~~

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1 is issued, other than the statement required by [section 4], on which a reference clearly appears to the legal  
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3 (III) A LEGISLATIVE ACT BY THE STATE OF MONTANA.

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 18 ~~act~~ ACTION a written statement of government needs and authority prepared as provided in this section.  
 19 THE STATEMENT MUST BE ISSUED WITHIN 15 DAYS OF THE GOVERNMENT ACT.

20 (2) The statement must clearly:

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0308, third reading

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ASSUMPTIONS:

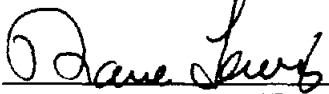
**State Fund:**

1. The proposed legislation is required to be "construed liberally" (Section 2).
2. All acts affecting claimants, policyholders, and/or medical providers ('persons directly and substantially affected by government action') would be required to be preceded by a detailed statement of government needs and authority.
3. Within 15 days of the government action being taken on a claim or other benefit, the State Fund would be required to provide to the claimant and the policyholder the 'statement' and a process for appealing.
4. The written statement of government need will be a notification issued separately from notifications of the action itself.
5. The State Fund estimates approximately 13,500 reported claims per year. It is estimated that each reported claim will be required to be notified an average of three times per year. This would add an estimated 40,500 outgoing pieces of mail per year.
6. Additional documentation will be required on each claim. This will increase the amount of staff time to be expended per claim. It is estimated that an additional 3.00 FTE claims assistants and 0.50 FTE medical-only assistant will be required to process the increased paper documentation. The estimated annual personal services expenses for these FTE are \$79,688.
7. The State Fund estimates that the bill will create approximately 113,500 additional outgoing pieces of mail for notifications to policyholders each year. Notification of State Fund authority would be required for government action on a claim under a State Fund policy (13,500), rate notification (25,000), policy amendments (25,000), class code changes (25,000), and rate changes (25,000).
8. The cost associated with 154,000 (40,500 + 113,500) additional pieces of outgoing mail is: \$45,430 for postage (154,000 x \$0.295); \$1,540 for envelopes (\$0.01 each); \$22,768 for personal services of 1.00 FTE document processing clerk.
9. Civil actions will be incurred if this proposed legislation is enacted upon passage and approval because the State Fund will, in the implementation period, either accept claims without notifying the affected persons and be liable for damages, or face the ramifications of delaying acceptance of claims until the 'statement' has been prepared for issuance.
10. The State Fund estimates an additional 1.00 FTE attorney for this increased litigation in fiscal year 1998. This position is estimated to decrease to 0.50 FTE in fiscal year 1999 as litigation from implementation subsides. The additional personal services expense in fiscal year 1998 is estimated to be \$52,000 and is estimated to decrease in fiscal year 1999 to \$26,000.
11. The additional cost of settlements, fines, and plaintiff's attorney fees cannot be reasonably estimated.
12. State Fund expenditures are appropriated by a statutory appropriation from the enterprise fund. The total estimated increases identified in the above assumptions are: 5.50 FTE in fiscal year 1998 and 5.00 FTE in fiscal year 1999, \$154,456 personal services in fiscal year 1998 and \$128,456 personal services in fiscal year 1999, and \$46,970 operating expenses in each fiscal year.

**Department of Transportation (MDT):**

13. Motor Carrier Services (MCS): All "contacts" (safety inspections, driver checks, permits, and licenses) issued by the MCS will require an accompanying statement as required in Section 4 of the bill. A one-page written statement will cost \$0.02 each. The total estimated costs for 130,900 contacts per year are \$2,618 to be funded from the highways special revenue account.

(Continued)

 3-13-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

 3/13/97  
 TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0308, third reading

SB 308 #2

(continued)

- 14. It is assumed that for most functions in the Engineering Division, standard language can be crafted to comply with Section 4(2)(b) and (c). This work can be accomplished with a modest investment of time and effort.
- 15. Complying with Section 4(2)(a) will require some additional staff time.
- 16. It is assumed that "government act" as defined in Section 3(2)(a) would include such activities as outdoor advertising permits and utility agreements.
- 17. Compiling the data required in Section 4(2)(a) will take one to several hours of staff time per event.
- 18. If "construed liberally" as required in Section 2(2), the Engineering Division is responsible for thousands of decisions annually.
- 19. Assuming 1,000 decisions requiring justification each year and an average preparation time of four hours per decision, it would require 2.00 FTE engineers, grade 14, be added. (2.00 FTE x \$31,835/year salary & benefits = \$63,670/year.) Additional operating expenses will amount to about 10% of the salary cost or \$6,400 each year.
- 20. About 75% of the additional work would be related to the federal aid highways program at the normal 80/20 split, and the remaining 25% would be entirely funded by highways special revenue.

**Commissioner of Political Practices:**

- 21. The definition of "government act" would require that each school, city, county, state district and statewide candidate be provided with a "statement of government needs and authority" when filing a statement of candidate and financial reports with the office of the Commissioner of Political Practices.
- 22. A "statement of government needs and authority" would have to be provided to each political party committee, political action committee (PAC) and ballot issue committee when filing a statement of organization and financial reports with the Commissioner's office.
- 23. A "statement of government needs and authority" would have to be provided to each state district official, statewide official and department director when filing a business disclosure statement with the Commissioner's office.
- 24. A "statement of government needs and authority" would have to be provided to each lobbyist when filing an application for a license to lobby. Each principal (employer of a lobbyist) would also have to be provided with a "statement of government needs and authority" when filing an authorization statement and financial reports with the Commissioner's office.
- 25. The estimated additional operating expenses for communications, supplies, and contracted legal services are \$6,500 per year.

**Other state agencies:**

- 26. Two other agencies, the Departments of Commerce and Environmental Quality, are unable to reasonably estimate a fiscal impact. Both estimate that there will be additional compliance costs.

**FISCAL IMPACT:**

[Excluding State Fund]	<u>FY98</u>	<u>FY99</u>
<u>Expenditures: (HB2)</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal services (MDT Construction)	63,670	63,670
Operating expenses (Comm. Pol. Practices)	6,500	6,500
Operating expenses (MDT Construction)	6,400	6,400
Operating expenses (MDT Motor Carrier Serv)	<u>2,618</u>	<u>2,618</u>
Total	79,188	79,188

**Funding:**

General fund (01)	6,500	6,500
State special (02)	30,646	30,646
Federal special (03)	<u>42,042</u>	<u>42,042</u>
Total	79,188	79,188

**EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:**

Local governments may experience some fiscal impact as a result of this bill. The fiscal impact, if any, is not subject to reasonable estimate.

## 1 SENATE BILL NO. 308

2 INTRODUCED BY BECK, STANG

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO  
5 PREPARE A WRITTEN STATEMENT OF NEEDS AND LEGAL AUTHORITY BEFORE TAKING CERTAIN  
6 ACTION; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS; CREATING AN  
7 OFFENSE; ~~AMENDING SECTION 7-1-106, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
8 AN APPLICABILITY DATE."

9  
10 STATEMENT OF INTENT

11 THE LEGISLATURE FINDS THAT THERE HAVE BEEN INSTANCES IN WHICH DECISIONS MADE BY  
12 GOVERNMENT ENTITIES EXCEED, OR APPEAR TO EXCEED, THE LEGAL AUTHORITY OF THE  
13 GOVERNMENT ENTITY. IN SOME INSTANCES, SUFFICIENT LEGAL AUTHORITY EXISTS FOR A  
14 PARTICULAR GOVERNMENT ACTION BUT A GOVERNMENT EMPLOYEE MAY NOT KNOW OF THE  
15 AUTHORITY OR FOR SOME REASON DOES NOT DISCLOSE THE AUTHORITY TO THE PERSON AFFECTED  
16 BY THE GOVERNMENT ACTION. BECAUSE THE POWER OF GOVERNMENT COMES ULTIMATELY FROM  
17 THE PEOPLE SERVED BY THE GOVERNMENT, IT IS APPROPRIATE THAT GOVERNMENT SHOULD NOT  
18 ACT WITHOUT KNOWING WHAT POWER IS BEING EXERCISED ON BEHALF OF THE PEOPLE.  
19 THEREFORE, THE LEGISLATURE FINDS THAT THERE IS A NEED FOR GOVERNMENT ENTITIES TO MAKE  
20 KNOWN THE LEGAL AUTHORITY UNDER WHICH THEY ACT AND TO MAKE KNOWN THE FACTUAL  
21 BASIS FOR THEIR ACTION AS WELL.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:24  
25 NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Government  
26 Accountability Act".27  
28 NEW SECTION. Section 2. Findings and purpose. ~~(1) The legislature finds that there have been~~  
29 ~~instances in which decisions made by government entities exceed, or appear to exceed, the legal authority~~  
30 ~~of the government entity. In some instances, sufficient legal authority exists for a particular government~~



1 ~~action but a government employee may not know of the authority or for some reason does not disclose the~~  
 2 ~~authority to the person affected by the government action. Because the power of government comes~~  
 3 ~~ultimately from the people served by the government, it is appropriate that government should not act~~  
 4 ~~without knowing what power is being exercised on behalf of the people. Therefore, the legislature finds~~  
 5 ~~that there is a need for government entities to make known the legal authority under which they act and~~  
 6 ~~to make known the factual basis for their action as well.~~

7 (2) The purpose of [sections 1 through 5] is to require government entities to make known their  
 8 legal authority and the factual basis for their actions. The benefits of this requirement will be that  
 9 government officials will reaffirm their legal authority to act and that both the government and the people  
 10 will have a fuller understanding of the limits of the law and the facts to which the law applies. This  
 11 understanding will benefit both government and the people by helping to resolve disputes between  
 12 government servants and the people at a lower level, without lengthy and costly litigation, by instilling trust  
 13 in government, and by helping to identify deficiencies in the law so that those deficiencies may be  
 14 addressed by legislative action. For these purposes, [sections 1 through 5] must be liberally construed.

15  
 16 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], the following definitions  
 17 apply:

18 (1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as  
 19 distinguished from a general interest, that has been adversely affected.

20 (2) (a) "Government act" means:

21 ~~(i) the denial or issuance with conditions of a permit, certificate, license, or other written authority~~  
 22 ~~for action issued by a government entity;~~

23 ~~(ii) the refusal by a government entity to allow action proposed by a person other than through the~~  
 24 ~~issuance of a permit, certificate, license, or other written authority; or~~

25 ~~(iii) a request or demand by a government entity that a person not take or cease taking a particular~~  
 26 ~~action.~~

27 (b) The term does not mean:

28 (i) litigation in which a government entity or other person litigates the authority of the government  
 29 entity to take an act provided in subsection (2)(a); ~~or~~

30 (ii) an act provided in subsection (2)(a) for which a citation or ~~other written document~~ WARNING

1 is issued, other than the statement required by [section 4], on which a reference clearly appears to the legal  
2 authority for the government action; OR

3 (III) A LEGISLATIVE ACT BY THE STATE OF MONTANA.

4 ~~(2)~~ "Government employee" means:

5 ~~(a)~~ an individual elected or appointed to an office of a government entity; or

6 ~~(b)~~ a permanent or temporary full time or part time employee of a government entity.

7 ~~(4)~~(3) "Government entity" means a state agency or a local government unit.

8 ~~(5)~~(4) "Local government unit" means a city, county, town, unincorporated municipality or village,  
9 or special taxing unit or district and any commission, board, bureau, or other office of the unit.

10 ~~(6)~~(5) "Rule" has the meaning provided in 2-4-102.

11 ~~(7)~~(6) "State agency" has the meaning provided in 2-4-102(2)(a).

12 ~~(8)~~(7) "Statement of government needs and authority" or "statement" means the statement  
13 required by [section 4].

14  
15 NEW SECTION. Section 4. Statement of government needs and authority required. (1) A WHEN  
16 A government entity ~~may not take~~ TAKES a government act ~~without first issuing~~, AS DEFINED IN [SECTION  
17 3(2)(A)], IT SHALL ISSUE to the person or persons directly and substantially affected by the ~~government~~  
18 ~~act~~ ACTION a written statement of government needs and authority prepared as provided in this section.  
19 THE STATEMENT MUST BE ISSUED WITHIN 15 DAYS OF THE GOVERNMENT ACT.

20 (2) The statement must clearly:

21 (a) identify ~~in detail~~ the factual basis or reason for the government act;

22 (b) cite the statute, rule, ordinance, RESOLUTION, or other legal authority for the government act  
23 and explain how the legal authority is interpreted by the government entity so as to authorize the  
24 government act; and

25 (c) provide information about any appeal or other process by which a person aggrieved by the  
26 government act may seek relief from the government act.

27  
28 NEW SECTION. Section 5. Civil action for damages authorized -- ~~misdemeanor~~ -- penalty. (1) A  
29 person aggrieved by a government act may bring a civil action for damages, in district court in the county  
30 in which a government entity has an office, against a government entity that takes a government act

1 without A FACTUAL BASIS OR legal authority, in violation of A FACTUAL BASIS OR its legal authority, or  
 2 that is otherwise arbitrary, capricious, or an abuse of discretion. Damages are the greater of actual  
 3 damages or \$1,000. If damages are awarded, the court shall also award the person's costs and reasonable  
 4 attorney fees.

5 (2) A government entity that ~~willfully or negligently~~ fails to issue a statement of government needs  
 6 and authority as required by [section 4] may be fined not less than \$500 or more than \$1,000.

7 ~~(3) A government employee who willfully or negligently fails to issue a statement of government~~  
 8 ~~needs and authority as required by [section 4] is guilty of a misdemeanor and may be fined not less than~~  
 9 ~~\$500 or more than \$1,000, imprisoned for not more than 1 year, or both.~~

10

11 ~~Section 6. Section 7-1-106, MCA, is amended to read:~~

12 ~~"7-1-106. Construction of self-government powers. The powers and authority of a local~~  
 13 ~~government unit with self-government powers shall must be liberally reasonably construed. Every~~  
 14 ~~reasonable doubt as to the existence of a local government power or authority shall be resolved in favor~~  
 15 ~~of the existence of that power or authority."~~

16

17 NEW SECTION. Section 6. Applicability. [This act] applies to a government act as defined by  
 18 [section 3] taken after [the effective date of this act].

19

20 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0308, second reading, second house

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring state and local government entities to prepare a written statement of needs and legal authority when taking certain actions.

ASSUMPTIONS:


State Fund:

1. The intent of the bill is that it not apply to the State Fund. This assumption is the State Fund's interpretation after discussions with the bill sponsor.
2. The intent of the bill is to apply to requests for government approval for action by the requestor, not action taken by the government entity itself. Common examples the bill is intended to apply to are: subdivision applications, request for sewage system permits, and requests for building permits.
3. Based upon assumptions 1 and 2, there will be no fiscal impact to the State Fund. If these assumptions are determined to be incorrect, the fiscal impact would be as presented in the fiscal note for the third reading version of the bill.

Department of Transportation (MDT):

4. Motor Carrier Services (MCS): All permits issued with restrictions (approximately 70,000 per year), and permits confiscated (approximately 1,000 per year) will require an accompanying statement as required in Section 4 of the bill. A one-page written statement will cost \$0.02 each. The total estimated costs for 71,000 permits per year are \$1,420 to be funded from the highways special revenue account.
5. Engineering Division: It is assumed that for most functions in the Engineering Division, standard language can be crafted to comply with Section 4(2)(b) and (c). This work can be accomplished with a modest investment of time and effort.
6. Compliance with Section 4(2)(a) in regard to specifically describing the factual basis or reason for each denial or conditional approval will require some additional staff time.
7. It is assumed that "government act" as defined in Section 3(2)(a) would include such department activities as outdoor advertising permits, signing permits, access management, encroachment permits (for shopping centers, for example), right-of-way, and utility agreements.
8. Compiling the data to support the factual basis or reason required in Section 4(2)(a) will take one to several hours of staff time per denial/conditional approval.
9. The Engineering Division is responsible for hundreds of denial decisions annually.
10. Assuming 500 denial/conditional approval decisions requiring a statement of government needs and authority each year and an average preparation time of four hours per decision (although some decisions may require several days of staff time), there would be additional workload at least equivalent to 1.00 FTE engineers, grade 14. The personal services expense for the additional 1.00 FTE is \$31,835 per year. Additional operating expenses will amount to about 10 percent of the salary cost or \$3,200 each year.
11. About 75 percent of the additional work would be related to the federal aid highways program at the normal 80/20 funding split, and the remaining 25 percent would be entirely funded by highways special revenue.

(Continued)

 4-2-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 4/3/97  
TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0308, second reading,  
second house

SB 308-#3

**Department of Fish, Wildlife, and Parks (FW & P):**

12. In fiscal year 1996, the department issued 16,069 refund checks to unsuccessful applicants who applied for the non-resident big game and deer combination licenses, 22,257 refund checks to unsuccessful applicants who applied for moose, goat and sheep special permits, and 27,940 refund checks to unsuccessful applicants who applied for deer, elk, and antelope special permits.
13. State warrants are pressure-sealed so agencies are not able to insert any additional stuffers prior to mailing unless the warrants are returned to the agency, hand stuffed, inserted into envelopes, and then mailed.
14. State warrants are designed to include an agency message but this is limited to three lines of up to thirty characters per line. The message option is currently used to identify that the applicant was unsuccessful.
15. Assuming that the warrant message space is insufficient to provide the required statement, the department would need to mail a post card to each unsuccessful applicant to make known the legal authority under which the department acts. The department costs are estimated to be \$0.25 per card for printing, paper, and postage. Total annual costs are estimated to be \$16,566 each year (66,266 x \$0.25).

**Commissioner of Political Practices:**

16. The definition of "government act" may require that each school, city, county, state district and statewide candidate be provided with a "statement of government needs and authority" when filing a statement of candidate and financial reports. A "statement of government needs and authority" may also have to be provided to each political party committee, political action committee (PAC), and ballot issue committee when filing a statement of organization and financial reports. A "statement of government needs and authority" may have to be provided to each state district official, statewide official and department director when filing a business disclosure statement. A "statement of government needs and authority" may have to be provided to each lobbyist when filing an application for a license to lobby. Each principal (employer of a lobbyist) may also have to be provided with a "statement of government needs and authority" when filing an authorization statement and financial reports.
17. The estimated additional operating expenses for communications, supplies, and contracted legal services are \$6,500 per year.

**Department of Revenue:**

18. The government actions requiring written statements of needs and legal authority appear to pertain primarily to the denial or issuance of permits, licenses, etc. With respect to the Department of Revenue, this would pertain primarily to the issuance of liquor licenses. Section 5 of the bill allows civil suits for damages including attorney fees. The introduced version of the bill allowed damages and attorney fees only if the government entity acted "without legal authority, in violation of it's legal authority, or that is otherwise arbitrary, capricious, or an abuse of discretion." Subsequent amendments to the bill provided that damages and attorney fees could be recovered if the government entity acted without "a factual basis". Adding this language considerably expanded the ability to recover damages and attorney fees. Under the former language, the government entity was liable only if doing something beyond their authority which was arbitrary and capricious. Under the amendment, any time an agency loses a lawsuit over a license or permit or "other written authority" it would be liable for damages and attorney fees.
19. The department anticipates that administrative expenses would increase by \$10,000 annually, on average, to cover these payments of attorney fees in cases that could be lost. The funding source is the general fund.

**Other state agencies:**

20. Three other agencies, the Departments of Commerce, Environmental Quality, and Public Health and Human Services are unable to reasonably estimate a fiscal impact. All estimate that there will be additional compliance costs or attorney fees and damages.

**Department of Justice:**

21. In FY 1996, the Gambling Control Division took 2,550 actions which could conceivably be subject to the reporting requirement in this act, including desk audit reports field audits. Some written documentation is provided to the licensee for most of these events, but it is unclear whether the documentation provided would constitute a "citation or warning" which would remove the actions from the definition of "government act" pursuant to Section 3(2)(b)(ii). Liberally construing the definition of "government act" provided in the bill section 2, as bill section 1 requires, it is assumed that all 2,550 of these actions would trigger the obligations of the act. An additional 323 actions were taken in FY 1996 that involved violations of gambling laws for which a notice of violation was supplied. It is assumed that these actions are accompanied by a "citation or warning" that would remove them from the definition of "government act" pursuant to Section 3(2)(b)(ii), but court interpretation may result in those actions being subject to the act's requirements.
22. In FY 1996, the Motor Vehicle Division denied 1500 driver's license applications based on the failure of the written or driving test, and suspended or revoked 14,400 drivers licenses for various reasons. It is assumed that the suspension and revocation actions are accompanied by a "citation or warning" that would remove them from the definition of "government act" pursuant to Section 3(2)(b)(ii), but court interpretation may result in those actions being subject to the act's requirements. Liberally construing the definition of "government act" provided in bill section 2, as bill section 1 requires, it is assumed that all 1500 of the license denials would trigger the obligations of the act, since no violation citation or warning is customarily given in these cases.
23. It is assumed for purposes of demonstration that successful court challenges under this act could be mounted in .1% of these actions, or in 4 cases per year [(2550 + 1500) x .001].
24. Under this act, the Department would be responsible for damages in the minimum amount of \$4,000 per year (\$1,000 x 4 cases). The maximum amount of damages cannot be reasonably estimated.
25. Under section 5 of this act, the Department would be responsible for attorney fees and costs in amounts that cannot be reasonably estimated, but that will range from a few hundred dollars to potentially several thousand dollars per case.
26. In addition, the Department would be required to devote staff time in compliance with the reporting requirements of the act and for the defense of the litigation in the 4 cases in which successful court action is assumed and any other cases in which the plaintiff is unsuccessful in challenging the Department's actions. Since this act provides an incentive for individuals to sue the Department, in the form of liquidated damages and attorney fees, the number of such challenges may be substantial. The amount of time devoted to compliance activities and litigation cannot reasonably be estimated, but may amount to several hundred hours of staff time.
27. It is estimated that an additional .75 FTE Attorney Specialist Grade 18 (\$44,147 x .75 = \$33,110) will be necessary to oversee implementation of this act. Annual operating expenses include 10% of the salary costs or \$3,311, attorney fees of \$20,000 and damages estimated at a minimum of \$4,000/year.
28. Equipment costs for the .75 FTE will be \$5,000 in FY 98.

(continued)

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE (MDT Construction)	1.00	1.00
FTE (Justice)	.75	.75
Personal services (MDT Construction)	31,835	31,835
Personal Services (Justice)	33,110	33,110
Operating expenses (FW & P)	16,566	16,566
Operating Expenses (Justice)	27,311	27,311
Operating expenses (Revenue)	10,000	10,000
Operating expenses (Comm. Pol. Practices)	6,500	6,500
Operating expenses (MDT Construction)	3,200	3,200
Operating expenses (MDT Motor Carrier Serv)	1,420	1,420
Equipment (Justice)	<u>5,000</u>	<u>0</u>
Total	134,942	129,942

Funding:

General fund (01)	81,921	76,921
Highways special revenue (02)	15,434	15,434
General license account (02)	16,566	16,566
Federal special (03)	<u>21,021</u>	<u>21,021</u>
Total	134,942	129,942

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments may experience some fiscal impact as a result of this bill. The fiscal impact, if any, is not subject to reasonable estimate.

SENATE BILL NO. 308

INTRODUCED BY BECK, STANG

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO PREPARE A WRITTEN STATEMENT OF ~~NEEDS AND~~ LEGAL AUTHORITY BEFORE TAKING CERTAIN ACTION; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS; ~~CREATING AN OFFENSE AND A CIVIL PENALTY; AMENDING SECTION 7-1-106, MCA; AMENDING SECTION 7-1-106, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

THE LEGISLATURE FINDS THAT THERE HAVE BEEN INSTANCES IN WHICH DECISIONS MADE BY GOVERNMENT ENTITIES EXCEED, OR APPEAR TO EXCEED, THE LEGAL AUTHORITY OF THE GOVERNMENT ENTITY. IN SOME INSTANCES, SUFFICIENT LEGAL AUTHORITY EXISTS FOR A PARTICULAR GOVERNMENT ACTION BUT A GOVERNMENT EMPLOYEE MAY NOT KNOW OF THE AUTHORITY OR FOR SOME REASON DOES NOT DISCLOSE THE AUTHORITY TO THE PERSON AFFECTED BY THE GOVERNMENT ACTION. BECAUSE THE POWER OF GOVERNMENT COMES ULTIMATELY FROM THE PEOPLE SERVED BY THE GOVERNMENT, IT IS APPROPRIATE THAT GOVERNMENT SHOULD NOT ACT WITHOUT KNOWING WHAT POWER IS BEING EXERCISED ON BEHALF OF THE PEOPLE. THEREFORE, THE LEGISLATURE FINDS THAT THERE IS A NEED FOR GOVERNMENT ENTITIES TO MAKE KNOWN THE LEGAL AUTHORITY UNDER WHICH THEY ACT AND TO MAKE KNOWN THE FACTUAL BASIS FOR THEIR ACTION AS WELL.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Government Accountability Act".

NEW SECTION. Section 2. Findings and purpose. ~~(1) The legislature finds that there have been instances in which decisions made by government entities exceed, or appear to exceed, the legal authority of the government entity. In some instances, sufficient legal authority exists for a particular government~~



1 ~~action but a government employee may not know of the authority or for some reason does not disclose the~~  
 2 ~~authority to the person affected by the government action. Because the power of government comes~~  
 3 ~~ultimately from the people served by the government, it is appropriate that government should not act~~  
 4 ~~without knowing what power is being exercised on behalf of the people. Therefore, the legislature finds~~  
 5 ~~that there is a need for government entities to make known the legal authority under which they act and~~  
 6 ~~to make known the factual basis for their action as well.~~

7 (2) The purpose of [sections 1 through 5] is to require government entities to make known their  
 8 legal authority and the factual basis for their actions. The benefits of this requirement will be that  
 9 government officials will reaffirm their legal authority to act and that both the government and the people  
 10 will have a fuller understanding of the limits of the law and the facts to which the law applies. This  
 11 understanding will benefit both government and the people by helping to resolve disputes between  
 12 government servants and the people at a lower level, without lengthy and costly litigation, by instilling trust  
 13 in government, and by helping to identify deficiencies in the law so that those deficiencies may be  
 14 addressed by legislative action. For these purposes, [sections 1 through 5] must be liberally construed.

15  
 16 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 5], the following definitions  
 17 apply:

18 (1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as  
 19 distinguished from a general interest, that has been adversely affected.

20 (2) (a) "Government act" means:

21 ~~(i) the denial or issuance with conditions of a permit, certificate, license, or other written authority~~  
 22 ~~for action SIMILAR OR EQUIVALENT RIGHT OR PRIVILEGE issued by a government entity;~~

23 ~~(ii) the refusal by a government entity to allow action proposed by a person other than through the~~  
 24 ~~issuance of a permit, certificate, license, or other written authority; or~~

25 ~~(iii) a request or demand by a government entity that a person not take or cease taking a particular~~  
 26 ~~action.~~

27 (b) The term does not mean:

28 (i) litigation in which a government entity or other person litigates the authority of the government  
 29 entity to take an act provided in subsection (2)(a); or

30 (ii) an act provided in subsection (2)(a) for which a citation or ~~other written document~~ WARNING

1 is issued, other than the statement required by [section 4], on which a reference clearly appears to the legal  
2 authority for the government action; OR

3 (III) A LEGISLATIVE ACT BY THE STATE OF MONTANA.

4 ~~(3)~~ "Government employee" means:

5 ~~(a) an individual elected or appointed to an office of a government entity; or~~

6 ~~(b) a permanent or temporary full-time or part-time employee of a government entity.~~

7 ~~(4)~~(3) "Government entity" means a state agency or a local government unit.

8 ~~(5)~~(4) "Local government unit" means a city, county, town, unincorporated municipality or village,  
9 or special taxing unit or district and any commission, board, bureau, or other office of the unit.

10 ~~(6)~~(5) "Rule" has the meaning provided in 2-4-102.

11 ~~(7)~~(6) "State agency" has the meaning provided in 2-4-102(2)(a).

12 ~~(8)~~(7) "Statement of government ~~needs and~~ authority" or "statement" means the statement  
13 required by [section 4].

14

15 NEW SECTION. Section 4. Statement of government ~~needs and~~ authority required. (1) A WHEN  
16 A government entity may not take TAKES a government act without first issuing, AS DEFINED IN [SECTION  
17 3(2)(A)], IT SHALL ISSUE to the ~~person or persons directly and substantially affected by the government~~  
18 ~~act~~ ACTION APPLICANT a written statement of government ~~needs and~~ authority prepared as provided in  
19 this section. THE STATEMENT MUST BE ISSUED WITHIN 15 DAYS OF THE GOVERNMENT ACT.

20 (2) The statement must clearly:

21 (a) identify ~~in detail~~ the factual basis or reason for the government act;

22 (b) cite the statute, rule, ordinance, RESOLUTION, or other legal authority for the government act  
23 and explain how the legal authority is interpreted by the government entity so as to authorize the  
24 government act; and

25 (c) provide information about any appeal or other process by which a person aggrieved by the  
26 government act may seek relief from the government act.

27

28 NEW SECTION. Section 5. Civil action for damages authorized -- ~~misdemeanor~~ -- penalty. (1) A  
29 person aggrieved by a government act may bring a civil action for damages, in district court in the county  
30 in which a government entity has an office, against a government entity that takes a government act

1 without ~~A FACTUAL BASIS OR~~ legal authority, in violation of ~~A FACTUAL BASIS OR~~ its legal authority, or  
 2 that is otherwise arbitrary, capricious, or an abuse of discretion. Damages are the greater of actual  
 3 damages or \$1,000. If damages are awarded, the court shall also award the person's costs and reasonable  
 4 attorney fees.

5 (2) A IF A government entity that willfully or negligently fails to issue a statement of government  
 6 ~~needs and~~ authority as required by [section 4] ~~may be fined~~, A CIVIL PENALTY OF not less than ~~\$500~~ \$100  
 7 or more than \$1,000 MUST BE IMPOSED.

8 ~~(3) A government employee who willfully or negligently fails to issue a statement of government~~  
 9 ~~needs and authority as required by [section 4] is guilty of a misdemeanor and may be fined not less than~~  
 10 ~~\$500 or more than \$1,000, imprisoned for not more than 1 year, or both.~~

11

12 ~~Section 6. Section 7-1-106, MCA, is amended to read:~~

13 ~~"7-1-106. Construction of self-government powers. The powers and authority of a local~~  
 14 ~~government unit with self-government powers shall must be liberally reasonably construed. Every~~  
 15 ~~reasonable doubt as to the existence of a local government power or authority shall be resolved in favor~~  
 16 ~~of the existence of that power or authority."~~

17

18 SECTION 6. SECTION 7-1-106, MCA, IS AMENDED TO READ:

19 "7-1-106. Construction of self-government powers. The powers and authority of a local  
 20 government unit with self-government powers shall must be liberally construed. Every Except for a power  
 21 or authority to deny or issue with conditions a permit, certificate, license, or similar or equivalent right or  
 22 privilege, every reasonable doubt as to the existence of a local government power or authority shall must  
 23 be resolved in favor of the existence of that power or authority."

24

25 NEW SECTION. Section 7. Applicability. [This act] applies to a government act as defined by  
 26 [section 3] taken after [the effective date of this act].

27

28 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

29

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0308, reference copy as amended

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring state and local government entities to prepare a written statement of needs and legal authority when taking certain actions.

ASSUMPTIONS:

**State Fund:**

1. The intent of the bill is that it not apply to the State Fund. This assumption is the State Fund's interpretation after discussions with the bill sponsor.
2. The intent of the bill is to apply to requests for government approval for action by the requestor, not action taken by the government entity itself. Common examples the bill is intended to apply to are: subdivision applications, request for sewage system permits, and requests for building permits.
3. Based upon assumptions 1 and 2, there will be no fiscal impact to the State Fund. If these assumptions are determined to be incorrect, the fiscal impact would be as presented in the fiscal note for the third reading version of the bill.


**Department of Transportation (MDT):**

4. Motor Carrier Services (MCS): All permits issued with restrictions (approximately 70,000 per year), and permits confiscated (approximately 1,000 per year) will require an accompanying statement as required in Section 4 of the bill. A one-page written statement will cost \$0.02 each. The total estimated costs for 70,000 permits per year are \$1,420 to be funded from the highways special revenue account.
5. Engineering Division: It is assumed that for most functions in the Engineering Division, standard language can be crafted to comply with Section 4(2)(b) and (c). This work can be accomplished with a modest investment of time and effort.
6. Compliance with Section 4(2)(a) in regard to specifically describing the factual basis or reason for each denial or conditional approval will require some additional staff time.
7. It is assumed that "government act" as defined in Section 3(2)(a) would include such department activities as outdoor advertising permits, signing permits, access management, encroachment permits (for shopping centers, for example), right-of-way, and utility agreements.
8. Compiling the data to support the factual basis or reason required in Section 4(2)(a) will take one to several hours of staff time per denial/conditional approval.
9. The Engineering Division is responsible for several government acts per month. The estimated workload needed to issue a statement of government needs and authority each year and an average preparation time are estimated to require 0.10 FTE engineers, grade 14, annually. Additional operating expenses will amount to about 10 percent of the salary cost or \$400 each year.

**Department of Fish, Wildlife, and Parks (FW & P):**

10. In fiscal year 1996, the department issued 16,069 refund checks to unsuccessful applicants who applied for the non-resident big game and deer combination licenses, 22,257 refund checks to unsuccessful applicants who applied for moose, goat and sheep special permits, and 27,940 refund checks to unsuccessful applicants who applied for deer, elk, and antelope special permits and over 30,000 unsuccessful applicants did not receive a refund since their refund was less than \$5.00.
11. State warrants are pressure-sealed so agencies are not able to insert any additional stuffers prior to mailing unless the warrants are returned to the agency, hand stuffed, inserted into envelopes, and then mailed.

(Continued)

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

TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0308, reference copy  
as amended

SB 308 #4

(continued)

12. State warrants are designed to include an agency message but this is limited to three lines of up to thirty characters per line. The message option is currently used to identify that the applicant was unsuccessful.
13. Assuming that the warrant message space is insufficient to provide the required statement, the department would need to mail a post card to each unsuccessful applicant to make known the legal authority under which the department acts. The department costs are estimated to be \$0.25 per card for printing, paper, and postage. Total annual costs are estimated to be \$24,066 each year (96,266 x \$0.25).

**Commissioner of Political Practices:**

14. The definition of "government act" would require notification only for those persons whose licensing is denied or issued with conditions. Therefore the fiscal impact for the Commissioner's office would be minimal and would require no additional funding.

**Department of Revenue:**

15. The government actions requiring written statements of needs and legal authority appear to pertain primarily to the denial or issuance of permits, licenses, etc. With respect to the Department of Revenue, this would pertain primarily to the issuance of liquor licenses. Section 5 of the bill allows civil suits for damages including attorney fees. The introduced version of the bill allowed damages and attorney fees only if the government entity acted "without legal authority, in violation of it's legal authority, or that is otherwise arbitrary, capricious, or an abuse of discretion." Subsequent amendments to the bill provided that damages and attorney fees could be recovered if the government entity acted without "a factual basis". Adding this language considerably expanded the ability to recover damages and attorney fees. Under the former language, the government entity was liable only if doing something beyond their authority which was arbitrary and capricious. Under the amendment, any time an agency loses a lawsuit over a license or permit or "other written authority" it would be liable for damages and attorney fees.
16. The department anticipates that administrative expenses would increase by \$10,000 annually, on average, to cover these payments of attorney fees in cases that could be lost. The funding source is the general fund.

**Other state agencies:**

17. Three other agencies, the Departments of Commerce, Environmental Quality, and Public Health and Human Services are unable to reasonably estimate a fiscal impact. All estimate that there will be additional compliance costs or attorney fees and damages.

**Department of Justice:**

18. In FY 1996, the Gambling Control Division took 2,550 actions which could conceivably be subject to the reporting requirement in this act, including desk audit reports/field audits. Some written documentation is provided to the licensee for most of these events, but it is unclear whether the documentation provided would constitute a "citation or warning" which would remove the actions from the definition of "government act" pursuant to Section 3(2)(b)(ii). Liberally construing therequires, it is assumed that all 2,550 of these actions would trigger the obligations of the act. An additional 323 actions were taken in FY 1996 that involved violations of gambling laws for which a notice of violation was supplied. It is assumed that these actions are accompanied by a "citation or warning" that (b)(ii), but court interpretation may result in those actions being subject to the act's requirements.
19. In FY 1996, the Motor Vehicle Division denied 1500 driver's license applications based on the failure of the written or driving test, and suspended or revoked 14,400 drivers licenses for various reasons. It is assumed that the suspension and revocation actions are accompanied by a "citation or warning" that would remove them from the definition of "government act" pursuant to Section 3(2)(b)(ii), but court interpretation may result in those actions being subject to the act's requirements. Liberally construing the definition of "government act" provided in bill section 2, as bill section 1 requires, it is assumed that all 1500 of the license denials would trigger the obligations of the act, since no violation/citation or warning is customarily given in these cases.

(continued)

(continued)

20. In FY96, the Motor Vehicle Division issued more than 61,000 drivers licenses with restrictions/conditions. It is assumed that each of those individuals would be provided with a written statement as required by this bill which will increase the amount of time expended with each customer increasing lines and waiting periods in driver licensing offices.
21. It is assumed for purposes of demonstration that successful court challenges under this act could be mounted in .1% of these actions, or in 4 cases per year [(2550 +1500) x .001].
22. Assuming 1% of those individuals issued a license with restrictions pursue an administrative hearing, it is estimated that approximately 600 administrative hearings would be requested annually. Each administrative hearing requires at least 2 hours to complete. If those additional administrative hearings are held during regular business hours, the public would experience a decreased level of service in the driver licensing offices statewide. However, if those administrative hearings are held after regular hours, the Department would experience an increase of approximately \$21,960 in personal services for overtime (600 hearings x 2 hours/hearing x \$12.197/hour x 1.5 overtime pay scale = \$21,960).
23. Under this act, the Department would be responsible for damages in the minimum amount of \$4,000 per year (\$1,000 x 4 cases). The maximum amount of damages cannot be reasonably estimated.
24. Under section 5 of this act, the Department would be responsible for attorney fees and costs in amounts that cannot be reasonably estimated, but that will range from a few hundred dollars to potentially several thousand dollars per case.
25. In addition, the Department would be required to devote staff time in compliance with the reporting requirements of the act and for the defense of the litigation in the 4 cases in which successful court action is assumed and any other cases in which the plaintiff is unsuccessful in challenging the Department's actions. Since this act provides an incentive for individuals to sue the Department, in the form of liquidated damages and attorney fees, the number of such challenges may be substantial. The amount of time devoted to compliance activities and litigation cannot reasonably be estimated, but may amount to several hundred hours of staff time.
26. In the Gambling Control Division, it is estimated that an additional .75 FTE Attorney Specialist Grade 18 (\$44,147 x .75 = \$33,110) will be necessary to oversee implementation of this act. Annual operating expenses include 10% of the salary costs or \$3,311, attorney fees of \$20,000 and damages estimated at a minimum of \$4,000/year. Equipment costs for the .75 FTE will be \$5,000 in FY 98.
27. In Motor Vehicle Division, operating costs are estimated at \$12,200 in FY98 and \$12,200 in FY99 for additional file documentation, supplies, and printing (61,000 restricted licenses x \$.20/each for supplies, forms and file imaging costs = \$12,200).

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE (MDT Construction)	0.10	0.10
FTE (Justice)	.75	.75
Personal services (MDT Construction)	3,139	3,139
Personal Services (Justice)	33,110	33,110
Operating expenses (FW & P)	24,066	24,066
Operating Expenses (Justice)	27,310	27,310
Operating Expenses (Justice-Motor Vehicles)	12,200	12,200
Operating expenses (Revenue)	10,000	10,000
Operating expenses (Comm. Pol. Practices)	0	0
Operating expenses (MDT Construction)	400	400
Operating expenses (MDT Motor Carrier Serv)	1,420	1,420
Equipment (Justice)	<u>5,000</u>	<u>0</u>
Total	116,645	111,645

(continued)

(continued)

Funding:

General fund (01)	22,200	22,200
Highways special revenue (02)	2,128	2,128
General license account (02)	24,066	24,066
Gambling special revenue (02)	65,420	60,420
Federal special (03)	<u>2,831</u>	<u>2,831</u>
Total	116,645	111,645

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments may experience some fiscal impact as a result of this bill. The fiscal impact, if any, is not subject to reasonable estimate.

TECHNICAL NOTE:

In the event that the state takes an action which is subsequently overturned by the courts, the state may be liable for judgments. However, there is no way to estimate what the impact may be.

# OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT  
GOVERNOR

STATE CAPITOL  
HELENA, MONTANA 59620-0801

April 18, 1997

The Honorable Gary Aklestad  
President of the Senate  
State Capitol  
Helena MT 59620

The Honorable John Mercer  
Speaker of the House  
State Capitol  
Helena MT 59620

Dear President Aklestad and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return Senate Bill 308, **"AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO PREPARE A WRITTEN STATEMENT OF LEGAL AUTHORITY BEFORE TAKING CERTAIN ACTION; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS AND A CIVIL PENALTY; AMENDING SECTION 7-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE"** for the following reasons.

Senate Bill 308 gives state and local government fifteen days in which to provide an applicant a written statement of authority any time it either denies or issues with conditions a permit, certificate, or license. The statement must include the reason for the act, a citation to the applicable legal authority, the governmental entity's interpretation of the legal authority, and information about how to appeal the decision. While I understand the intent of the bill, I believe it goes too far.

First of all, Senate Bill 308 will create new responsibilities and associated costs for state and local government, without any funds for carrying out those responsibilities having been provided to date.

With respect to the state government, Senate Bill 308 will apply to the over 65,000 hunting permits denied each year by the Department of Fish, Wildlife, and Parks as a result of permit drawings. It will apply to the 1500 driver's licenses that the Motor



Vehicle Division of the Department of Justice denies each year because the applicants fail the written or driving test. At a time when government funding is tight, the expense of notifying these applicants in writing of the factual basis for the act, the legal authority for the act, the relevant legal interpretation, and information about appealing the act seems unjustifiable.

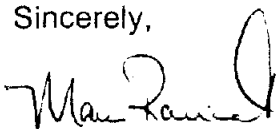
Senate Bill 308 also applies to state liquor and gambling licenses, and to the 70,000 motor carrier permits that are issued with restrictions each year. Assuming that a written explanation is warranted, requiring that it be sent out within fifteen days is no small problem for agencies who are given no additional funding to provide this service. The most recent fiscal note indicates an impact of over \$100,000 per year to state agencies. The fiscal impact on local government has not been quantified.

I am also opposed to the bill's creation of yet another cause of action against governmental entities. Current law already allows individuals to collect costs and reasonable attorneys' fees when government acts in bad faith. By establishing yet another category of litigation, section 5 invites additional lawsuits by citizens against government, at a time when government is spending too much of its resources for costs of litigation.

Finally, section 6 of the bill amends current law in a manner that is inconsistent with the Montana Constitution. Article XI, section 4 of the Montana Constitution requires that the powers of incorporated cities and towns and counties shall be liberally construed. Section 7-1-106, MCA, tracks that language by providing that every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority. Senate Bill 308, however, adds a qualification to section 7-1-1-06, which results in resolving doubts in favor of the existence of local government power "except for a power or authority to deny or issue with conditions a permit, certificate, license, or similar or equivalent right or privilege." The Legislature may not, by statute, add a qualification to an unqualified constitutional requirement.

I am proposing amendments to Senate Bill 308 that would limit the fiscal impact of the bill and still address the perceived abuses. The amendments will require that state and local government provide upon request an applicant with a statement of legal authority for any permit, certificate or license denied or issued with conditions. Putting this requirement in the law will result in government's ability to take adverse personnel action where appropriate if a government employee does not comply with the requirement.

Sincerely,



MARC RACICOT  
Governor

GOVERNOR'S AMENDMENTS TO  
Senate Bill No. 308  
(Reference Copy)  
April 18, 1997

1. Title, line 5.  
Strike: "PREPARE"  
Insert: "provide upon request"  
Following: "AND"  
Insert: "the"  
Following: "AUTHORITY"  
Insert: "upon which"  
Strike: "BEFORE TAKING"
2. Title, line 6.  
Following: "ACTION"  
Insert: "is based:"  
Strike: "PROVIDING FOR CIVIL ACTIONS"
3. Title, line 7.  
Strike: "AND A CIVIL PENALTY"  
Strike: "AMENDING SECTION 7-1-106."
4. Title, line 8.  
Strike: "MCA."
5. Statement of intent, page 1, lines 13 through 16.  
Strike: "IN" on line 13 through "ACTION." on line 16
6. Statement of intent, page 1, line 17.  
Following: "IS"  
Insert: "therefore"  
Following: "SHOULD"  
Insert: "upon request"  
Strike: "NOT"
7. Statement of intent, page 1, lines 18 through 20.  
Strike: "ACT" on line 18 through "KNOWN" on line 20  
Insert: "provide"
8. Statement of intent, line 20.  
Strike: "UNDER"  
Insert: "upon"  
Following: "WHICH"  
Insert: "certain action is based"

9. Statement of intent, page 1, lines 20 and 21.  
Strike: "THEY" on line 20 through "WELL" on line 21
  
10. Page 2, line 7.  
Strike: "their"  
Insert: "the"
  
11. Page 2, line 8.  
Strike: "and the factual basis for their actions"  
Insert: "upon which certain action is based"
  
12. Page 2, line 9.  
Following: "will"  
Insert: "articulate and"
  
13. Page 2, line 12.  
Strike: "at a lower level"
  
14. Page 2, line 14.  
Strike: "For" through "construed."
  
15. Page 2, line 22.  
Strike: "SIMILAR OR EQUIVALENT RIGHT OR PRIVILEGE"  
Insert: "the equivalent of such permit, certificate, or license,"
  
16. Page 3, line 17.  
Strike: "ISSUE"  
Insert: "provide upon request"
  
17. Page 3, line 18.  
Strike: "government"  
Insert: "legal"  
Following: "authority"  
Insert: "upon which the action is based"
  
18. Page 3, lines 18 and 19.  
Strike: "prepared" on line 18 through "section" on line 19
  
19. Page 3, line 19.  
Strike: "ISSUED"  
Insert: "provided"  
Strike: "15"  
Insert: "30"
  
20. Page 3, line 20.  
Strike: ":"

21. Page 3, line 21.  
Strike: line 21 in its entirety

22. Page 3, line 22.  
Strike: "(b)"  
Following: "act"  
Insert: "."

23. Page 3, line 23 through page 4, line 23.  
Strike: page 3, line 23 through page 4, line 23 in their entirety  
Renumber: subsequent sections

## 1 SENATE BILL NO. 308

2 INTRODUCED BY BECK, STANG

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO  
 5 ~~PREPARE~~ PROVIDE UPON REQUEST A WRITTEN STATEMENT OF ~~NEEDS AND~~ THE LEGAL AUTHORITY  
 6 UPON WHICH BEFORE TAKING CERTAIN ACTION IS BASED; PROVIDING DEFINITIONS AND EXCEPTIONS;  
 7 ~~PROVIDING FOR CIVIL ACTIONS; CREATING AN OFFENSE AND A CIVIL PENALTY; AMENDING SECTION~~  
 8 ~~7-1-106, MCA; AMENDING SECTION 7-1-106, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
 9 AND AN APPLICABILITY DATE."  
 10

11 STATEMENT OF INTENT

12 THE LEGISLATURE FINDS THAT THERE HAVE BEEN INSTANCES IN WHICH DECISIONS MADE BY  
 13 GOVERNMENT ENTITIES EXCEED, OR APPEAR TO EXCEED, THE LEGAL AUTHORITY OF THE  
 14 GOVERNMENT ENTITY. IN SOME INSTANCES, SUFFICIENT LEGAL AUTHORITY EXISTS FOR A  
 15 PARTICULAR GOVERNMENT ACTION BUT A GOVERNMENT EMPLOYEE MAY NOT KNOW OF THE  
 16 AUTHORITY OR FOR SOME REASON DOES NOT DISCLOSE THE AUTHORITY TO THE PERSON AFFECTED  
 17 BY THE GOVERNMENT ACTION. BECAUSE THE POWER OF GOVERNMENT COMES ULTIMATELY FROM  
 18 THE PEOPLE SERVED BY THE GOVERNMENT, IT IS THEREFORE APPROPRIATE THAT GOVERNMENT  
 19 SHOULD UPON REQUEST NOT ACT WITHOUT KNOWING WHAT POWER IS BEING EXERCISED ON  
 20 BEHALF OF THE PEOPLE. THEREFORE, THE LEGISLATURE FINDS THAT THERE IS A NEED FOR  
 21 GOVERNMENT ENTITIES TO MAKE KNOWN PROVIDE THE LEGAL AUTHORITY UNDER UPON WHICH  
 22 CERTAIN ACTION IS BASED THEY ACT AND TO MAKE KNOWN THE FACTUAL BASIS FOR THEIR ACTION  
 23 AS WELL.  
 24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 26

27 NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ 4] may be cited as the  
 28 "Government Accountability Act".  
 29

30 NEW SECTION. **Section 2. Findings and purpose.** ~~(1) The legislature finds that there have~~

1 instances in which decisions made by government entities exceed, or appear to exceed, the legal authority  
 2 of the government entity. In some instances, sufficient legal authority exists for a particular government  
 3 action but a government employee may not know of the authority or for some reason does not disclose the  
 4 authority to the person affected by the government action. Because the power of government comes  
 5 ultimately from the people served by the government, it is appropriate that government should not act  
 6 without knowing what power is being exercised on behalf of the people. Therefore, the legislature finds  
 7 that there is a need for government entities to make known the legal authority under which they act and  
 8 to make known the factual basis for their action as well.

9        (2) The purpose of [sections 1 through ~~5~~ 4] is to require government entities to make known their  
 10 THE legal authority and the factual basis for their actions UPON WHICH CERTAIN ACTION IS BASED. The  
 11 benefits of this requirement will be that government officials will ARTICULATE AND reaffirm their legal  
 12 authority to act and that both the government and the people will have a fuller understanding of the limits  
 13 of the law and the facts to which the law applies. This understanding will benefit both government and the  
 14 people by helping to resolve disputes between government servants and the people ~~at a lower level~~,  
 15 without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies  
 16 in the law so that those deficiencies may be addressed by legislative action. ~~For these purposes, [sections~~  
 17 ~~1 through 5] must be liberally construed.~~

18  
 19        NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~5~~ 4], the following  
 20 definitions apply:

21        (1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as  
 22 distinguished from a general interest, that has been adversely affected.

23        (2) (a) "Government act" means:

24        (1) ~~the denial or issuance with conditions of a permit, certificate, license, or other written authority~~  
 25 ~~for action~~ SIMILAR OR EQUIVALENT RIGHT OR PRIVILEGE THE EQUIVALENT OF A PERMIT, CERTIFICATE,  
 26 OR LICENSE issued by a government entity;

27        (2) ~~the refusal by a government entity to allow action proposed by a person other than through the~~  
 28 ~~issuance of a permit, certificate, license, or other written authority; or~~

29        (3) ~~a request or demand by a government entity that a person not take or cease taking a particular~~  
 30 ~~action.~~

1 (b) The term does not mean:

2 (i) litigation in which a government entity or other person litigates the authority of the government  
3 entity to take an act provided in subsection (2)(a); or

4 (ii) an act provided in subsection (2)(a) for which a citation or ~~other written document~~ WARNING  
5 is issued, other than the statement required by [section 4], on which a reference clearly appears to the legal  
6 authority for the government action; OR

7 (III) A LEGISLATIVE ACT BY THE STATE OF MONTANA.

8 ~~(3) "Government employee" means:~~

9 ~~(a) an individual elected or appointed to an office of a government entity; or~~

10 ~~(b) a permanent or temporary full-time or part-time employee of a government entity.~~

11 ~~(4)~~(3) "Government entity" means a state agency or a local government unit.

12 ~~(5)~~(4) "Local government unit" means a city, county, town, unincorporated municipality or village,  
13 or special taxing unit or district and any commission, board, bureau, or other office of the unit.

14 ~~(6)~~(5) "Rule" has the meaning provided in 2-4-102.

15 ~~(7)~~(6) "State agency" has the meaning provided in 2-4-102(2)(a).

16 ~~(8)~~(7) "Statement of government ~~needs and~~ authority" or "statement" means the statement  
17 required by [section 4].

18

19 NEW SECTION. Section 4. Statement of government ~~needs and~~ authority required.

20 (1) A WHEN A government entity ~~may not take~~ TAKES a government act ~~without first issuing, AS~~  
21 DEFINED IN [SECTION 3(2)(A)], IT SHALL ISSUE PROVIDE UPON REQUEST to the ~~person or persons~~  
22 ~~directly and substantially affected by the government act~~ ACTION APPLICANT a written statement of  
23 government LEGAL ~~needs and~~ authority UPON WHICH THE ACTION IS BASED ~~prepared as provided in this~~  
24 ~~section.~~ THE STATEMENT MUST BE ISSUED PROVIDED WITHIN 15 30 DAYS OF THE GOVERNMENT ACT.

25 (2) The statement must clearly:

26 ~~(a) identify in detail the factual basis or reason for the government act;~~

27 ~~(b) cite the statute, rule, ordinance, RESOLUTION, or other legal authority for the government act,~~  
28 ~~and explain how the legal authority is interpreted by the government entity so as to authorize the~~  
29 ~~government act; and~~

30 ~~(c) provide information about any appeal or other process by which a person aggrieved by the~~

1 ~~government act may seek relief from the government act.~~

2  
3 ~~**NEW SECTION. Section 5. Civil action for damages authorized — misdemeanor —**~~  
4 ~~**penalty.** (1) A person aggrieved by a government act may bring a civil action for damages, in district~~  
5 ~~court in the county in which a government entity has an office, against a government entity that takes a~~  
6 ~~government act without A FACTUAL BASIS OR legal authority, in violation of A FACTUAL BASIS OR its~~  
7 ~~legal authority, or that is otherwise arbitrary, capricious, or an abuse of discretion. Damages are the greater~~  
8 ~~of actual damages or \$1,000. If damages are awarded, the court shall also award the person's costs and~~  
9 ~~reasonable attorney fees.~~

10 ~~(2) A IF A government entity that willfully or negligently fails to issue a statement of government~~  
11 ~~needs and authority as required by [section 4] may be fined, A CIVIL PENALTY OF not less than \$500 \$100~~  
12 ~~or more than \$1,000 MUST BE IMPOSED.~~

13 ~~(3) A government employee who willfully or negligently fails to issue a statement of government~~  
14 ~~needs and authority as required by [section 4] is guilty of a misdemeanor and may be fined not less than~~  
15 ~~\$500 or more than \$1,000, imprisoned for not more than 1 year, or both.~~

16  
17 ~~**Section 6. Section 7-1-106, MCA, is amended to read:**~~

18 ~~**"7-1-106. Construction of self-government powers.** The powers and authority of a~~  
19 ~~local government unit with self-government powers shall must be liberally reasonably construed. Every~~  
20 ~~reasonable doubt as to the existence of a local government power or authority shall be resolved in favor~~  
21 ~~of the existence of that power or authority."~~

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23 ~~**SECTION 6. SECTION 7-1-106, MCA, IS AMENDED TO READ:**~~

24 ~~**"7-1-106. Construction of self-government powers.** The powers and authority of a~~  
25 ~~local government unit with self-government powers shall must be liberally construed. Every Except for a~~  
26 ~~power or authority to deny or issue with conditions a permit, certificate, license, or similar or equivalent~~  
27 ~~right or privilege, every reasonable doubt as to the existence of a local government power or authority shall~~  
28 ~~must be resolved in favor of the existence of that power or authority."~~

29  
30 ~~**NEW SECTION. Section 5. Applicability.** [This act] applies to a government act as defined~~



1 by [section 3] taken after [the effective date of this act].

2

3 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

4

-END-