

HOUSE BILL NO. 422

INTRODUCED BY R. COOK

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO LOCAL GOVERNMENT; WITHHOLDING OR OFFSETTING ENTITLEMENT SHARE PAYMENTS TO A LOCAL GOVERNMENT UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE ATTORNEY GENERAL TO REVIEW COMPLAINTS CONCERNING THE ALLEGED OFFICIAL MISCONDUCT OF LOCAL GOVERNMENT PUBLIC OFFICERS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-517, 15-1-121, AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Official misconduct -- evidential review.** The attorney general shall review a complaint referred from a county attorney concerning alleged misconduct of a local government public officer pursuant to [section 2] or an independent complaint made to the attorney general concerning the alleged misconduct of a local government public officer and any evidence concerning the officer's alleged misconduct. After reviewing the complaint, the attorney general may instruct the county attorney to diligently prosecute the officer as provided by 2-15-501(5), bring an action against the officer as provided in 45-7-401, or decline to prosecute the officer.

NEW SECTION. **Section 2. Referral of complaint.** If a county attorney receives a complaint concerning official misconduct as provided in 45-7-401 of a local government public officer and the county attorney declines to prosecute the officer, the county attorney must refer the complaint and any relevant evidence for the attorney general's review as provided by [section 1].

Section 3. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalties -- rules to establish fine. (1) ~~When~~ Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt

1 of the report or payment of the filing fee, all financial assistance that was withheld under this section must be
2 released and paid to the local government entity.

3 (2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the
4 audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify
5 the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

6 (3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days
7 of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to
8 the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to
9 make payment must be released and paid to the local government entity.

10 (4) The department may grant an extension to a local government entity for filing the audits and reports
11 required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local
12 government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503
13 was the result of circumstances beyond the entity's control.

14 (5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of
15 providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the
16 timeframes required under that section."

17

18 **Section 4.** Section 15-1-121, MCA, is amended to read:

19 **"15-1-121. Entitlement share payment -- purpose -- appropriation.** (1) As described in 15-1-120(3),
20 each local government is entitled to an annual amount that is the replacement for revenue received by local
21 governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant
22 to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later
23 enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other
24 revenue in the state treasury with each local government's share. The reimbursement under this section is
25 provided by direct payment from the state treasury rather than the ad hoc system that offset certain state
26 payments with local government collections due the state and reimbursements made by percentage splits, with
27 a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending
28 a portion to other local governments.

29 (2) The sources of dedicated revenue that were relinquished by local governments in exchange for an
30 entitlement share of the state general fund were:

- 1 (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter
2 584, Laws of 1999;
- 3 (b) vehicle, boat, and aircraft taxes and fees pursuant to:
- 4 (i) Title 23, chapter 2, part 5;
- 5 (ii) Title 23, chapter 2, part 6;
- 6 (iii) Title 23, chapter 2, part 8;
- 7 (iv) 61-3-317;
- 8 (v) 61-3-321;
- 9 (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment
10 of 61-3-509 in 2001;
- 11 (vii) Title 61, chapter 3, part 7;
- 12 (viii) 5% of the fees collected under 61-10-122;
- 13 (ix) 61-10-130;
- 14 (x) 61-10-148; and
- 15 (xi) 67-3-205;
- 16 (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- 17 (d) district court fees pursuant to:
- 18 (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
- 19 (ii) 25-1-202;
- 20 (iii) 25-9-506; and
- 21 (iv) 27-9-103;
- 22 (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- 23 (f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;
- 24 (g) all beer, liquor, and wine taxes pursuant to:
- 25 (i) 16-1-404;
- 26 (ii) 16-1-406; and
- 27 (iii) 16-1-411;
- 28 (h) late filing fees pursuant to 61-3-220;
- 29 (i) title and registration fees pursuant to 61-3-203;
- 30 (j) veterans' cemetery license plate fees pursuant to 61-3-459;

- 1 (k) county personalized license plate fees pursuant to 61-3-406;
2 (l) special mobile equipment fees pursuant to 61-3-431;
3 (m) single movement permit fees pursuant to 61-4-310;
4 (n) state aeronautics fees pursuant to 67-3-101; and
5 (o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77,
6 chapter 1, part 5.

7 (3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in
8 the prior fiscal year as an entitlement share payment under this section is the base component for the subsequent
9 fiscal year distribution, and in each subsequent year the prior year entitlement share payment, including any
10 reimbursement payments received pursuant to subsection (7), is each local government's base component.
11 Subject to subsection (3)(b), the sum of all local governments' base components is the fiscal year entitlement
12 share pool.

13 (b) For fiscal year 2016, the fiscal year entitlement share pool is reduced by \$1,049,904.

14 (4) (a) Subject to subsection (3)(b), the base entitlement share pool must be increased annually by an
15 entitlement share growth rate as provided for in this subsection (4). The amount determined through the
16 application of annual growth rates is the entitlement share pool for each fiscal year.

17 (b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share
18 pool for the next fiscal year in the following manner:

19 (i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of
20 state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the
21 statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second
22 previous completed fiscal years received from the sources referred to in subsections (2)(b), (2)(c), and (2)(g)
23 divided by the sum of the revenue for the second and third previous completed fiscal years received from the
24 same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous
25 completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate
26 income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third
27 previous completed fiscal years received from the same sources multiplied by 0.25.

28 (ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

29 (A) the sum of the first factor plus the second factor; or

30 (B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

1 (iii) In no instance can the entitlement growth factor be less than 1. Subject to subsection (4)(b)(iv), the
2 entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to
3 determine the subsequent fiscal year payment.

4 (iv) For fiscal year 2016, the entitlement share growth rate is applied to the most recently completed fiscal
5 year entitlement payment minus \$1,049,904 to determine the subsequent fiscal year payment.

6 (5) As used in this section, "local government" means a county, a consolidated local government, an
7 incorporated city, and an incorporated town. A local government does not include a tax increment financing
8 district provided for in subsection (8). The county or consolidated local government is responsible for making an
9 allocation from the county's or consolidated local government's share of the entitlement share pool to each special
10 district within the county or consolidated local government in a manner that reasonably reflects each special
11 district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each
12 special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

13 (6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2)
14 for local governments, the funding provided for in subsection (8) of this section, and the amounts determined
15 under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from
16 the general fund to the department for distribution to local governments. Except for the distribution made under
17 15-1-123(2)(b), the distributions must be made on a quarterly basis.

18 (b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year
19 and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be
20 calculated separately for:

21 (A) counties;

22 (B) consolidated local governments; and

23 (C) incorporated cities and towns.

24 (ii) In each fiscal year, the growth amount for counties must be allocated as follows:

25 (A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal
26 year entitlement share pool for all counties; and

27 (B) 50% of the growth amount must be allocated based upon the percentage that each county's
28 population bears to the state population not residing within consolidated local governments as determined by the
29 latest interim year population estimates from the Montana department of commerce as supplied by the United
30 States bureau of the census.

1 (iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as
2 follows:

3 (A) 50% of the growth amount must be allocated based upon each consolidated local government's
4 percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

5 (B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local
6 government's population bears to the state's total population residing within consolidated local governments as
7 determined by the latest interim year population estimates from the Montana department of commerce as
8 supplied by the United States bureau of the census.

9 (iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

10 (A) 50% of the growth amount must be allocated based upon each incorporated city's or town's
11 percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

12 (B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's
13 population bears to the state's total population residing within incorporated cities and towns as determined by the
14 latest interim year population estimates from the Montana department of commerce as supplied by the United
15 States bureau of the census.

16 (v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments
17 made under subsection (7) are applied is to be distributed to each local government in the same manner as the
18 entitlement share pool was distributed in the prior fiscal year.

19 (7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section,
20 the department shall determine the reimbursement amount as provided in the enactment and add the appropriate
21 amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal
22 year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool.
23 The ratio of each local government's distribution from the entitlement share pool must be recomputed to
24 determine each local government's ratio to be used in the subsequent year's distribution determination under
25 subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

26 (8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a
27 tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax
28 increment financing district is not entitled to any funding. If a tax increment financing district referred to in
29 subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

30 (b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in

1 this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to
 2 subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

3	Deer Lodge	TIF District 1	\$2,833
4	Deer Lodge	TIF District 2	2,813
5	Flathead	Kalispell - District 2	4,638
6	Flathead	Kalispell - District 3	37,231
7	Flathead	Whitefish District	148,194
8	Gallatin	Bozeman - downtown	31,158
9	Missoula	Missoula - 1-1C	225,251
10	Missoula	Missoula - 4-1C	30,009
11	Silver Bow	Butte - uptown	255,421

12 (9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local
 13 governments do not include revenue received from tax increment financing districts, from countywide
 14 transportation block grants, or from countywide retirement block grants.

15 (10) When there has been an underpayment of a local government's share of the entitlement share pool,
 16 the department shall distribute the difference between the underpayment and the correct amount of the
 17 entitlement share. When there has been an overpayment of a local government's entitlement share, the local
 18 government shall remit the overpaid amount to the department.

19 (11) A local government may appeal the department's estimation of the base component, the entitlement
 20 share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform
 21 dispute review procedure in 15-1-211.

22 (12) (a) A payment required pursuant to this section may not be offset by a debt owed to a state agency
 23 by a local government in accordance with Title 17, chapter 4, part 1.

24 (b) A payment required pursuant to this section must be withheld if a local government:

25 (i) fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and

26 (ii) fails to remit any amounts collected on behalf of the state as required by 15-1-504 or any other
 27 amounts owed to the state or another taxing jurisdiction, as otherwise required by law, within 45 days of the end
 28 of a month."

29

1 **Section 5.** Section 17-4-105, MCA, is amended to read:

2 **"17-4-105. Authority to collect debt -- offsets.** (1) Once a debt of an agency has been transferred to
3 the department, the department may collect it. The department may contract with commercial collection agents
4 for recovery of debts owed to agencies.

5 (2) The department shall, when appropriate, offset any amount due an agency from a person or entity
6 against any amount, including refunds of taxes, owing the person or entity by an agency. The department may
7 not exercise this right of offset until the debtor has first been notified by the department and been given an
8 opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child
9 support collected by the department of public health and human services. The department shall deduct from the
10 claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and
11 for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount
12 available must be applied first to debts owed by reason of the nonpayment of child support and then in the
13 manner determined appropriate by the department.

14 (3) (a) The department may enter into an agreement with the federal government to offset against tax
15 refunds payable by the federal government and pay to the state any taxes or other debts owed to an agency of
16 the state. Except as provided in subsection (3)(c), the state may also enter into a reciprocal agreement with the
17 federal government for the state to offset against tax refunds payable by the state and pay to the federal
18 government any taxes or other debts owed to the federal government.

19 (b) For purposes of offsetting of debts referred to in subsection (3)(a), offsets or payments will be made
20 in the following priority:

21 (i) child support payments;

22 (ii) any debts that are owed to this state, an agency of this state as defined in 17-4-101, or a local
23 government unit, including a county, city, town, consolidated city-county, school district, or local public entity with
24 the authority to spend or receive public funds; and

25 (iii) any debts owed to the federal government.

26 (c) Taxes or debts that cannot be liened or levied upon pursuant to 26 U.S.C. 5000A(g) must be
27 excluded from the offset.

28 (d) (i) The department may enter into an agreement with another state or an agency of another state to
29 offset against tax refunds payable by the other state or agency of the other state and pay to this state any taxes
30 or other debts owed to this state or an agency of this state.

1 (ii) To facilitate an agreement of the kind authorized by subsection (3)(d)(i), the department may enter
2 into an agreement that allows the other state or agency of the other state to offset against tax refunds payable
3 by this state the whole or part of an amount owed for taxes to the other state or agency of the other state.
4 However, the department may enter into an agreement of the type authorized by subsection (3)(a) or (3)(d)(i) only
5 if the other state or agency of the other state or the federal government allows the offset against tax refunds owed
6 by the other state or agency of the other state or the federal government any taxes or other debts owed to this
7 state or an agency of this state.

8 (e) A state or agency of another state or the federal government entering into an agreement with the
9 department pursuant to subsection (3)(a) or (3)(d)(i) may not exercise the offset against tax refunds unless the
10 other state or agency of the other state or the federal government has notified the taxpayer of the taxes due and
11 has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another
12 state intending to offset taxes shall provide the department with proof of notification and opportunity for review
13 or appeal before the offset is exercised.

14 (4) (a) A debt owed to the department of public health and human services or being collected by the
15 department of public health and human services on behalf of any person or agency may be offset by the
16 department if the debt is being enforced or collected by the department of public health and human services
17 under Title IV-D of the Social Security Act.

18 (b) The debt does not need to be determined to be uncollectible as provided for in 17-4-104 before being
19 transferred to the department for offset. The debt must have accrued through written contract, court judgment,
20 administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910.

21 (c) Within 30 days following the notification provided for in subsection (2), the person owing a debt
22 described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the
23 department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject
24 matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made
25 as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing
26 methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public
27 health and human services shall adopt rules governing the hearing procedures.

28 (5) If the department determines that a person or entity has refused or neglected to file a claim within
29 a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or
30 entity. If the claim is approved by the department, the claim has the same force and effect as if it were filed by

1 the person or entity. The amount due any person or entity from the state or any agency of the state is the net
2 amount otherwise owing the person or entity after any offset, as provided in this section.

3 (6) ~~A~~ Except as provided in 2-7-517, a debt owed to a state agency by a local government may not be
4 offset against a payment due to a local government pursuant to 15-1-121."

5
6 NEW SECTION. Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an
7 integral part of Title 2, chapter 15, part 5, and the provisions of Title 2, chapter 15, part 5, apply to [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 4, part 27, and the
9 provisions of Title 7, chapter 4, part 27, apply to [section 2].

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

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- END -