

1 SENATE BILL NO. 153

2 INTRODUCED BY J. BRUEGGEMAN

3 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING THE EXPENDITURE OF
6 APPROPRIATIONS; REQUIRING THE USE OF FUND TRANSFERS FOR THE PURPOSE OF EXPENDING
7 NONGENERAL FUND MONEY BEFORE EXPENDING GENERAL FUND MONEY; CLARIFYING CONDITIONS
8 FOR EXPENDING MONEY APPROPRIATED FOR THE SECOND YEAR OF A BIENNIUM IN THE FIRST YEAR
9 OF A BIENNIUM; AMENDING SECTIONS 17-2-108, 17-7-139, AND 17-7-301, MCA; AND PROVIDING AN
10 EFFECTIVE DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 **Section 1.** Section 17-2-108, MCA, is amended to read:

15 **"17-2-108. Expenditure of nongeneral fund money first.** (1) Except for the exemptions applicable to
16 the Montana historical society in 22-3-114(5), the Montana state library in 22-1-226(5), the Montana school for
17 the deaf and blind in 20-8-107(5), and the department of public health and human services in 53-1-612, an office
18 or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against
19 appropriated nongeneral fund money whenever possible before using general fund appropriations. Unless a
20 restriction is contained in an appropriation act, the requirement of this subsection includes using fund transfers
21 among programs as provided for in 17-7-139.

22 (2) Except as provided in 53-1-612, the approving authority, as defined in 17-7-102, shall authorize the
23 decrease of the general fund appropriation of an agency by the amount of money received from federal sources
24 in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule,
25 or a contract or unless the approving authority certifies that the services to be funded by the additional money
26 are significantly different than those for which the agency received the general fund appropriation. If directed by
27 an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the
28 amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary
29 to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by
30 the additional money are significantly different than those for which the agency received the general fund

1 appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the
2 appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

3 (3) If directed by an appropriation act, the approving authority may decrease a state special revenue,
4 proprietary, or other fund appropriation of an agency by the amount of money received from federal sources in
5 excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The
6 appropriation for the fund in which the money is received is decreased by the amount of the federal special
7 revenue increase allowed by law, rule, or contract and approved for the purpose."

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9 **Section 2.** Section 17-7-139, MCA, is amended to read:

10 "**17-7-139. Program transfers.** (1) (a) Unless prohibited by law or a condition contained in the general
11 appropriations act, the approving authority:

12 (i) may approve agency requests to transfer appropriations between programs within each fund type
13 within each fiscal year; and

14 (ii) shall approve agency requests to transfer an appropriation between programs within each fund type
15 if the request is made for purposes of complying with 17-2-108(1).

16 (b) A fund transfer provided for in subsection (1)(a) may not be made if the transfer would create a cash
17 balance in a state special revenue account that is less than 10% of the average of the annual revenue received
18 in the account in the 3 previous fiscal years.

19 (c) The legislature may restrict the use of funds appropriated for personal services to allow use only for
20 the purpose of the appropriation.

21 (d) An explanation of any significant transfer must be submitted on a regular basis to the interim
22 committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5,
23 part 2. An explanation of any transfer that involves a significant change in agency or program scope, objectives,
24 activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the
25 legislative finance committee prior to any implementation of the change.

26 (e) If the approving authority certifies that a request for a transfer representing a significant change in
27 agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may
28 approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The
29 approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to
30 approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is

1 warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed
 2 change and communicate any concerns expressed to the approving authority. The approving authority shall
 3 present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.

4 (f) All program transfers must be completed within the same fund from which the transfer originated. A
 5 request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by
 6 the requesting agency to the approving authority and the office of budget and program planning. Upon approval
 7 of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer
 8 and the justification for the transfer.

9 (g) If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be
 10 retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of
 11 the first year of a biennium may be retransferred.

12 (2) For the purposes of subsection (1), an agency or program is considered to have a significant change
 13 in its scope, objectives, activities, or expenditures if:

14 (a) the budget transfer exceeds \$1 million; or

15 (b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than
 16 \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers,
 17 including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold."
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19 **Section 3.** Section 17-7-301, MCA, is amended to read:

20 **"17-7-301. Authorization to expend during first year of biennium from appropriation for second**
 21 **year -- proposed supplemental appropriation defined -- limit on second-year expenditures.** (1) An agency
 22 may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year
 23 of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general
 24 appropriations act to make first-year expenditures may be granted spending authorization by the approving
 25 authority upon submission and approval of a proposed supplemental appropriation to the approving authority.
 26 The proposal submitted to the approving authority must include a plan for reducing expenditures in the second
 27 year of the biennium that allows the agency to contain expenditures within appropriations. If the approving
 28 authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the
 29 first fiscal year of the biennium with all other ~~income~~ available general fund, state special revenue, and federal
 30 funds will be insufficient for the operation and maintenance of the agency during the year for which the

1 appropriation was made, the approving authority shall, after careful study and examination of the request and
2 upon review of the recommendation for executive branch proposals by the budget director, submit the proposed
3 supplemental appropriation to the legislative fiscal analyst.

4 (2) The plan for reducing expenditures required by subsection (1) is not required if the proposed
5 supplemental appropriation is:

6 (a) due to an unforeseen and unanticipated emergency for fire suppression;

7 (b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351,
8 and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to
9 elementary and secondary schools for the current biennium; or

10 (c) requested by the attorney general and:

11 (i) is to pay the costs associated with litigation in which the department of justice is required to provide
12 representation to the state of Montana; or

13 (ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is
14 responsible for confinement of an arrested person in a detention center.

15 (3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the
16 approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the
17 appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the approving
18 authority shall require the agency to implement the plan for reducing expenditures in the second year of the
19 biennium that contains agency expenditures within appropriations.

20 (4) The agency may expend the amount authorized by the approving authority only for the purposes
21 specified in the authorization.

22 (5) The approving authority shall report to the next legislature in a special section of the budget the
23 amounts expended as a result of all authorizations granted by the approving authority and shall request that any
24 necessary supplemental appropriation bills be passed.

25 (6) As used in this part, "proposed supplemental appropriation" means an application for authorization
26 to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year
27 of the biennium.

28 (7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the
29 second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly
30 referred to as a "supplemental appropriation".

1 (b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in
2 the second year of the biennium that contains agency expenditures within appropriations. The approving authority
3 is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated
4 expenditures that are required by state or federal law will cause an agency to exceed appropriations or available
5 funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the
6 greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer
7 funds between fund types in order to implement a plan."

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9 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2009.

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