EXHIBIT 2
DATE Feb 4, 09
HB 10

The Delegation of Legislative Authority

and

Good Budgeting/Appropriation Practice

(common sense approach)

First Premise:

- It is a legislative requirement to create a balanced budget
- It is legislature's task/job to make appropriations
- It is within the legislative purview to transfer funds, which then fund appropriations

Issue 1-delegation of legislative authority

- HB 10 (and HB 5) contains language that is a delegation of legislative authority.

- **Section 4. Fund transfers.** (2) The transferred funds must be used for the projects enumerated in [section 2]. In order to maintain an adequate ending general fund balance, if at any time during the 2011 biennium, the office of budget and program planning projects a 2011 biennium unreserved general fund ending balance of less than $300 million, the office of budget and program planning may reduce or eliminate the transfers in subsection (1). The department of administration shall transfer funds on a schedule approved by the office of budget and program planning that enables the state to meet management goals for cash flow and fund balance.

Issue 1-continued:

- If the 61st Legislature passes HB 10 including the current Section 4, subsection (2), the language will delegate legislative authority to the OBPP, in that the language provides that OBPP can change what the Legislature has, within its authority, set in law
  - As a guiding principle, when the legislature delegates its authority to an agency (or division), it should establish sufficient parameters to ensure that the wishes and intents of the body are met

Issue 1-continued:

- The language of HB 10 provides the OBPP with the decision making process that is in the purview of the legislature
- HB 10 does not provide any parameters by which these decisions will be made
- Significant questions include:
  - When would the decision to reduce transfers be made?
  - How will the reductions be made?
  - Will the legislature be notified of plans for transfer reductions?
  - Is the legislature comfortable with the OBPP providing both the estimate of the GF EFB and the reductions of transfer amounts?

Issue 1-*finally*:

HB 10 (and HB 5) was not written by the legislature and may not fully represent the legislatures interests

The LRP subcommittee hears and evaluates the bill and significant issues are best understood by this subcommittee

Options:

1. Eliminate section 4, subsection (2) of HB 10 (and similar subsection of HB 5)
2. Develop parameters to provide guidance to OBPP in their assumption of this legislative authority
3. Take no action to change the delegation of authority and omission guiding parameters

Second Premise:

- Good budget policy is:

$1.00 of appropriations = $1.00 anticipated revenue

- Bad budget policy is:

$2.00 of appropriations = $1.00 anticipated revenue

Second Premise part 2:

- Montana Constitution, Article VIII.

Section 9. Balanced budget.
Appropriations by the legislature shall not exceed anticipated revenue.

Issue 2-over appropriation of LRITP fund

- The OBPP estimate of the 2011 biennium state general fund ending fund balance, as included in the balance sheet of the Governor's Budget "Yellow Book" (p. 25) is $294.742 million (and things have gotten worse since)
- Given the language contained in HB 10, Section 4, subsection (2), with a "trigger" of $300 million, transfers of state general funds to the LRITP fund may be reduced
- The OBPP did not include the transfers to the LRITP capital projects fund in the balance sheet mentioned above (indicating that the transfers to the LRITP were eliminated)

Issue 2-continued

- The only source of revenue for appropriations from the LRITP fund was a OTO General Fund transfer of $6.9 million
- The LRITP has no ongoing/dedicated source of state funding
- The LRITP has no beginning fund balance (that the LFD has been made aware of)
- There is NO anticipated revenue for the appropriations included for the LRITP capital projects fund in the 2011 biennium

Issue 2-continued

LRITP Capital Projects Fund

LRITP Revenues, 2009 Biennium		
GF OTO Transfers		$40,919,000
Department of Administration		
Network Upgrades	($2,042,000)	
University Research Network	(568,000)	
Public Safety Radio Consortium	(4,595,000)	
Public Safety Radio Interoperability	(3,500,000)	
Total DOA Expenditures plus Planned Future Expenditures		($10,705,000)
Department of Public Health and Human Services		
TANF Eligibility Systems	($7,625,000)	
CHIMES	(550,000)	
Food Stamp Eligibility Systems	(6,535,000)	
Child and Adult Protective Services System	(15,204,000)	
Medicaid Disease Codes	(300,000)	
Total DPHHS Expenditures plus Planned Future Expenditures		($30,214,000)
2009 Biennium Ending Fund Balance / 2011 Biennium Beginning Fund Balance:		$0
LRITP Revenues, 2011 Biennium		
GF OTO Transfers		$0
Department of Public Health and Human Services		
MMIS Replacement	($3,500,000)	
Total DPHHS Appropriations		($3,500,000)
Department of Revenue		
Improve Efficiency Through Imaging Technology	($3,366,178)	
Total DOR Appropriations		($3,366,178)
2011 Biennium Ending Fund Balance:		($6,866,178)

Issue 2-continued

- Consequences to LRITP with an unfunded appropriation include:
  - The capital projects appropriation lives on until funding is provided
  - If funding is not provided in the 2011 biennium, there is no certainty when funds may be available
  - Future legislatures may be required to deal with the problem by
    - Transferring GF in future biennia
    - Eliminating 2011 biennium project appropriations in future biennia

Issue 2-finally:

HB 10 (and HB 5) was not written by the legislature and may not fully represent the legislative position

The LRP subcommittee hears and evaluates the bill and significant issues are best understood by this subcommittee

Options:

1. Eliminate section 4, subsection (2) of HB 10 (and similar section of HB 5)
2. Change the "trigger" of $300 million
3. Eliminate the LRITP appropriations of $6.9 million
4. Eliminate or reduce past appropriations to provide funding for current biennium HB 10 appropriations
5. Take no action related to the unfunded appropriations

First Premise *(again)*:

- It is a legislative requirement to create a balanced budget
- It is legislature's task/job to make appropriations
- It is within the legislative purview to transfer funds, which then fund appropriations

Issue 3-delegation of legislative authority (again)

- HB 10 contains additional language that is a delegation of legislative authority.

- **Section 2. Appropriations and authorizations.**
  - (4) The projects for which funds are appropriated in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, for the department of public health and human services are authorized for the transfer of appropriations and authority within fund types and among projects.
  - (5) The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax modernization project.

Issue 3-continued:

- If the 61st Legislature passes HB 10 including the current Section 2, subsection (4), the language will delegate legislative authority to the DOA, DOR, and the DPHHS, in that the language provides that these agencies can change what the Legislature has, within its authority, set in law
  - As a guiding principle, when the legislature delegates its authority to an agency (or division), it should establish sufficient parameters to ensure that the wishes and intents of the body are met

Issue 3-continued:

- HB 10 allows the agencies to change the amounts related to specific appropriations and from which funds the appropriations will be expended
- HB 10 does not provide any parameters by which these decisions will be made
- The language of HB 10 provides the DOA, DOR, and the DPHHS with the decision making process that is in the purview of the legislature

Issue 3-continued

- Consequences to the LRITP budget:
  - The planned budget may be changed in its entirety
  - The state matching funds for federal dollars for DPHHS projects will be intermingled with other funds
  - Projects may be started without sufficient funding to complete the project
  - Future legislatures may be forced to provide funding for projects

Issue 3-finally:

HB 10 (and HB 5) was not written by the legislature and may not fully represent the legislative position

The LRP subcommittee hears and evaluates the bill and significant issues are best understood by this subcommittee

This HB 10 language is recommended as a way to manage the lack of funding for LRITP appropriations

Options:

1. Eliminate section 2, subsection (4) of HB 10
2. Develop parameters to provide guidance to OBPP in their assumption of this legislative authority
3. Make changes as recommended in Issue 2
4. Take no action related to the delegation of legislative authority

Finally:

If a budget is well planned and balanced, there is no need for the problematic language included in HB 10 (and HB 5)