

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

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LEGISLATIVE
FISCAL ANALYST

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GOVERNOR



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September 24, 2014

Senator Llew Jones, Chairman
Legislative Finance Committee

Senator Jones and Members of the LFC,

Let me apologize for being unable to attend your meeting in person. A previous work engagement prevents my participation today. Please accept this letter as both a response to specific questions regarding Senate Bill 410 allocations as well as my own comments regarding a critical issue before you.

As you recall, in the waning days of the 2013 legislative session numerous issues were left unresolved as is the case in all sessions. I'll use this opportunity to discuss the Bullock Administration's view of these items both as related to Senate Bill 410 and other important issues which you will be discussing during your meeting.

First, House Bill 13 (HB13) passed in the waning days of the legislative session. As I'm confident you recall, for the first time a lump sum appropriation was allocated to be negotiated with our employees by the Executive. The only direction accompanying that allocation is as follows:

"Funds appropriated under [section 3(1)] must be used to increase the base pay for each employee. The base pay of employees must be increased *as determined by the executive branch (emphasis added)*, including those subject to the provisions of Title 39, chapter 31, with particular attention to lower pay bands and those who did not receive a base pay increase during the biennium beginning July 1, 2011."

The Executive did as the bill directed. A pay increase for FY2014 and FY2015 was negotiated in good faith and implemented for both union and non-union employees. The agreement included a 3% pay increase effective July 1, 2013 and a 5% increase effective November 15, 2014. This level of increase was implemented not only for Cabinet agencies with directors who report to the Governor, but for all other executive branch agencies headed by separately elected officials.

The report before you entitled "Personal Services Analysis" implies that it is a policy decision of the legislature to fund the full continuation of the pay increases authorized in HB13 into the next biennium, under the premise that the legislature only intended to fund a 3% pay increase each year. I would argue that it is not a policy decision at this time as the policy decision was made during the last biennium when the legislature authorized the Governor to negotiate in good faith with our employees. Many instances of HB13 adopted by the legislature in the past have included pay increases that did not start on the first day of any given fiscal year but rather delayed or expedited implementation. If the legislature intended for the Executive to give a 3% pay

increase on a certain date, that intent could and should have been included in the plain language of HB13 at the time of passage during the 2013 Legislature.

The Executive believes that the statute as written governs and the full allocation of 3% and 5% should be honored by the legislature as negotiated by the Governor at the legislature's direction. I would ask the Legislative Finance Committee to present the plain reading of the statute as direction to the joint subcommittees in the recommended global motions presented to the 2015 Legislature and fully fund the 3% and 5% personal services budget of executive branch agencies.

Senate Bill 410 (SB410) appropriated \$13.5 million to various executive branch agencies in order to "implement the general appropriations act." These funds were allocated in \$2 million increments to the Department of Labor and Industry (DLI), Department of Corrections (DOC) and Department of Public Health and Human Services (DPHHS). An additional \$7.5 million was allocated to the Office of Budget and Program Planning to fund operational costs of the Executive Branch. The funds have been used or will be used as follows:

DLI: The 2013 Legislature changed numerous funding mixes within the department, many of which were not allowable purposes of the funds. The DLI used the SB410 appropriations to remedy these changes in order to comply with the regulations. This funding mix will again be asked for in the November 15 Executive Budget in order to make this fix permanent.

DPHHS: All funds allocated to the department will be used to mitigate supplemental risk in FY2015. No new programs will be funded with these dollars.

DOC: These funds are being used to fund PL 999 as presented to the 2013 Legislature. The following is from Volume I of the 2015 Biennium Executive Budget (page D-49).

"This decision package funds the cost of maintaining negotiated pay schedules that provide incremental competency pay adjustments for newer employees as they achieve certain educational and experiential milestones. According to a recent decision from the Montana Board of Personnel Appeals (Unfair Labor Practice Charge No. 14-2012), these automatic pay adjustments are subjects of mandatory bargaining under Montana's collective bargaining act and, as such, cannot be unilaterally discontinued and must be maintained during the time successor agreements are being negotiated."

Governor's Office: The Governor has made the following allocations from the governors' operations account:

Department of Commerce - \$215,000 OTO to implement the Main Street Montana Project.

Office of the Commissioner of Higher Education - \$325,000 OTO to assist in the development of necessary programs related to the ADF International development in Great Falls.

Office of the Public Defender - \$625,000 to deal with statewide caseload growth.

Office of Public Instruction - \$50,652 to support early childhood education program development.

Department of Corrections - \$692,000 OTO to make one-time only safety equipment purchases and upgrades and installation of fiber optic facilities to Montana State Prison.

Department of Public Health and Human Services - \$251,552.35 to support the efforts of the Child and Family Services Division.

Department of Justice - \$248,773 for the purposes of hiring two additional Division of Criminal Investigation agents to be located in Eastern Montana to help ensure public safety.

Excluding any reverted funds, this constitutes a total draw of \$2,407,977.35 leaving \$5,092,022.65. The Governor has empowered me to use these remaining funds for supplemental mitigation efforts.

Again, I apologize for not being able to attend your meeting today but am prepared to respond to any and all questions that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Villa', written in a cursive style.

DAN VILLA
Budget Director