



Montana Legislative Services Division  
Legal Services Office

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DATE: November 17, 2011  
TO: Terry Johnson, Principal Fiscal Analyst  
FROM: Jaret Coles, Legislative Staff Attorney  
RE: Legal Opinion Regarding SB 426

**FACTS**

During the 62nd Legislative Session, [Senate Bill No. 426](#) (SB 426) was a referendum bill that passed in both the Senate and the House and will be on the November 2012 general election ballot.<sup>1</sup> If passed by the electorate, SB 426 provides a framework for a potential taxpayer refund of state general fund surplus balance. Generally, the credit is triggered if "the unaudited general fund balance in the fiscal year exceeds 125% of the *budgeted general fund balance* for that fiscal year", so long as a business equipment property tax rate has been in effect for at least 1 year and the excess balance is at least \$5 million.<sup>2</sup> The term "budgeted general fund balance" is defined as:

[A] projected general fund balance calculated by the legislative fiscal analyst by August 1 for each fiscal year. In determining the projected general fund balance, the legislative fiscal analyst shall use the appropriate fiscal year amounts *as utilized by the legislature in developing the biennial budget*. The fiscal year amounts are *anticipated* revenues and transfers that include the impacts of enacted legislation, established level of appropriations and transfers, *anticipated* supplemental appropriations, and *anticipated* reversions. To calculate the projected balance, the legislative fiscal analyst shall add the unassigned fund balance from the most recent completed fiscal year plus the *anticipated* revenues and transfers less the level of appropriations and transfers, supplemental appropriations, and *anticipated* reversions for the most recent completed fiscal year. (emphasis added).<sup>3</sup>

It is my understanding that as part of your session duties you prepare general fund balance projections for the future biennium (*i.e.*, fiscal years 2012 and 2013 during the 62nd Legislative Session), as well as general fund balance projections for the current biennium (*i.e.*, fiscal year 2011 during the 62nd Legislative Session). As such, you asked for a legal opinion regarding what set of projections the Legislative Fiscal Analyst is required to use for the purpose of the SB 426 calculation.

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<sup>1</sup> See Ch. 311, L. 2011.

<sup>2</sup> *Id.* § 1 (1)(a) (emphasis added).

<sup>3</sup> *Id.* § 1 (7)(a).

## LEGAL QUESTION

When calculating the budgeted general fund balance under SB 426, what projections does the Legislative Fiscal Analyst utilize?

## SHORT ANSWER

SB 426 mandates the use of fiscal year amounts that were "utilized by the legislature in developing the biennial budget". The plain language of SB 426 does not provide for the use of amounts that were calculated but not utilized in developing the biennial budget. As such, any analysis that the Legislative Fiscal Analyst performs after the biennial budget has been developed cannot be utilized.

## ANALYSIS

When interpreting the meaning of a statute, courts first look to its plain language. *Mont. Sports Shooting Ass'n, Inc. v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003, citing *State v. Letasky*, 2007 MT 51, ¶ 11, 336 Mont. 178, 152 P.3d 1288. The statute is read as a whole "without isolating specific terms from the context in which they are used by the Legislature". *City of Great Falls v. Morris*, 2006 MT 93, ¶ 19, 332 Mont. 85, 134 P.3d 692. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it. Section 1-2-102, MCA.

As applied here, the plain language of SB 426 provides that in "[i]n determining the projected general fund balance, the legislative fiscal analyst **shall use** the appropriate fiscal year amounts **as utilized by the legislature in developing the biennial budget**". There is no language in SB 426 stating that the Legislative Fiscal Analyst has the authority to use fiscal year amounts that were not utilized to develop the biennial budget, and the quoted phrase is very particular. Related to this is the canon of statutory construction known as *expressio unius est exclusio alterius*, which means the expression of one thing in a statute implies the exclusion of another. See *Omimex Canada, Ltd. v. State*, 2008 MT 403, ¶ 21, 347 Mont. 176, 201 P.3d 3.

Moreover, when reading the statute as a whole there is further support for the position that the Legislative Fiscal Analyst must constrain the analysis to figures that were in existence when the Legislature developed the budget. The term anticipated is used on several occasions, including anticipated revenues and transfers, anticipated supplemental appropriations, and anticipated reversions. A variety of the figures that are used in current fiscal year projections have already been accounted for and are therefore not anticipated. Consequently, it is hard to interpret the statute as a whole to mean that current biennium projections can be utilized when they were not utilized to develop the budget.

I hope that I have adequately addressed your questions. Please let me know if you have any additional questions or concerns.

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