

# **IMPLEMENTING A COMPANION BILL TO HB 2**

A Report Prepared for the  
**Legislative Finance Committee**

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## INTRODUCTION

Certain language and other conditions that the legislature may wish to make pertaining to the general appropriations act may not be appropriate for inclusion in HB 2 because of constitutional limitations that preclude inclusion of substantive law in a general appropriations act. This report discusses the issues the legislature should be aware of and address if the concept of a companion bill is used to express legislative expectations and/or requirements, and primarily concentrates on maintenance of an orderly process.

In 2006, the Legislative Finance Committee (LFC) directed staff to provide training to subcommittees on the companion bill, and allow the subcommittees to make their own determination of whether to request a bill(s). With the exception of a bill articulating performance measures for the Montana University System, which had been a project of the Postsecondary Education Policy and Budget (PEPB) committee, no subcommittee recommended the drafting of a companion bill.

## USING A COMPANION BILL

There can only be two types of language provisions in either HB 2 or a HB 2 companion bill:

- 1) In HB 2, language must condition the appropriation. If the agency does not follow the requirements of the language the appropriation is in peril, making appropriations conditioning a very persuasive legislative tool. Therefore, if the legislature wishes to tie receipt of an appropriation to any condition, it should do so in HB 2.
- 2) In a companion bill, language must implement a provision of HB 2, although it does not need to condition an appropriation. By definition, a companion bill follows HB 2 through the process and is adjusted as needed or desired. Bills that implement provisions of HB 2 have the same transmission deadlines as HB 2, which are later than other legislation. Therefore, unless the bill implements provisions of HB 2, it must meet the standard transmission and introduction deadlines, which do not meet the needs of a true companion bill.

## PURPOSES OF A COMPANION BILL

A companion bill can serve a number of purposes by providing a vehicle for the legislature for provisions related to appropriations and agency performance that are not appropriate for inclusion in HB 2. Among the potential uses are:

- o Articulation of performance/accountability measures and related reporting requirements
- o Other reporting requirements
- o Statutory changes necessary to implement provisions of the budget (i.e. increases in fees to generate revenue already assumed in the budget)
- o Special instructions on use of or access to appropriations
- o Requirement of agency action

Appendix A provides examples of each of the potential uses mentioned. The legislature may determine other uses.

## 2007 Legislative Session

As stated above, only one bill that generally meets the definition of a companion bill was introduced in the 2007 legislative session. SB 566 provided incentives for meeting certain goals (such as transferability), provided the statutory change necessary to implement a new program funded in HB 2, and included requirements for reporting and other action representing legislative intent. The bill died in House Appropriations.

## Governor's Powers

The Governor has line-item veto power in HB 2. Therefore, the Governor can veto any appropriation line item appropriation, as well as language associated with that appropriation, from the bill without legislative concurrence. As you are aware, the Governor vetoed several line items and associated language in HB 2

relating to reporting requirements, primarily dealing with reporting requirements on performance. (The Governor also vetoed language that did not have a corresponding line item appropriation, which has questionable legal basis. However, no court challenge was filed on this or other legal considerations of the vetoes made.)

A companion bill would make it more difficult for the Governor to selectively delete components the legislature determines important. While the Governor has line-item veto power for a bill with “several distinct items of appropriation of money”, the Governor does not have line item veto authority over other bills. The degree to which this is possible will depend in part on whether the title can be crafted to include different types of appropriations-related items. But the general rules of veto then apply. The Governor may suggest amendments to the bill. If they are not accepted by the legislature, the Governor must either sign or veto the entire bill.

## **REQUESTING A COMPANION BILL**

Bills to implement HB 2 can only be requested by the committee in possession of the bill. Therefore, individual legislators and other committees could not request a companion bill to HB 2. Depending upon timing, any companion bill could only be requested by:

- Individual subcommittees
- House Appropriations Committee (HAC)
- Senate Finance and Claims Committee (SF&C)

The committee of the whole, either the House or the Senate, could not request a companion bill.

## **Number and General Content of Bills**

The legislature has a number of choices on the number of bills, depending upon the ease (fewer bills are easier) and flexibility desired, and the political realities. In addition, the legislature could start with a certain number of bills, and combine or break apart those bills as the session progressed. As stated earlier, on content only two things are required:

- The bill must implement a provision of HB 2
- As a corollary, contingency language must be included in HB 2 if necessary should the companion bill fail

## ***Considerations on Number of Bills***

- How many bills do you want to have to keep track of?
- What flexibility do you want to give the legislature or the Governor?
  - More bills allow a greater chance that less controversial provisions will make it through the process
  - More bills also give the Governor more flexibility, as the Governor does not have line-item veto power with companion bills

## ***Potential Options***

Any of the following options, and many others, could be considered, singly or in combination. In fact, the possibilities might be endless.<sup>1</sup> The legislature may wish to begin the session with one decision on the number of bills, and adjust the number as the session progresses.

### **Number of Bills**

- 1) One bill for each subcommittee, with potential combination later.
- 2) As many bills as each subcommittee votes to request, with potential combination later.
- 3) Recommendations from subcommittees, with HAC making the initial determination of how many bills to proceed with.

### **Content**

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<sup>1</sup> For example, the legislature could have one bill for all reporting requirements, another for statutory changes, etc.

- 1) One omnibus bill (cannot be requested earlier than HAC action, unless it will be constructed by combining other bills).
- 2) Two or more bills, with one reserved for “non-controversial” items (same restriction on the timing of the request as above).
- 3) Two or more bills, each devoted to a type of purpose, i.e performance management articulation, statutory changes, reporting requirements, etc.

### ***Recommendation***

No recommendation on the number of bills or specific content is made, as this is entirely an issue of legislative preferences, priorities, and goals.

### **Timing**

Timing refers to when the bills should be heard and acted upon by the committee. As long as the companion bill implements the provisions of HB 2, it has the same deadlines as HB 2, including transmission to the second house by the 67<sup>th</sup> day. Bills could also be referred to the HB 2 free conference committee.

### ***Considerations on Timing***

- o Efficiency of the legislative process
- o Maintenance of connection with the current version of HB 2

### ***Recommendation***

All companion bills should be scheduled to be heard and acted upon simultaneously with HB 2.

## **LFC RECOMMENDATIONS**

Issue 1: Does the LFC wish to make a recommendation that companion bills be used?

- 1) Recommend that HAC and SF&C adopt the concept of a companion bill(s) and provide instructions to subcommittees to consider companion bills in their work.
- 2) Make no recommendation

Issue 2: Does the LFC wish to make a recommendation on the timing of any companion bills?

- 1) Recommend that all companion bills be scheduled simultaneously with HB 2
- 2) Make no recommendation

Issue 3: Does the LFC wish to make a recommendation on the number of bills to begin and/or the general content?

- 1) Recommend that subcommittees initiate subcommittee bills as necessary
  - a. One bill per subcommittee
  - b. Unlimited number of bills per subcommittee
- 2) Recommend that subcommittees make recommendations to HAC for that committee to determine the number and content of any companion bills

## **APPENDIX A**

### **EXAMPLES OF COMPONENTS OF A COMPANION BILL**

The following are examples, some taken from the 2009 biennium HB 2, to show how a companion bill may work. The list is not all inclusive, and the legislature may think of a number of other potential utilizations of a companion bill.

#### **ARTICULATE PERFORMANCE/ACCOUNTABILITY MEASURES**

The legislature could request a bill requiring the submission of certain goals and objectives and/or in anticipation of certain performance benchmarks, and articulate those goals/performance benchmarks in a companion bill.

“[Agency] shall provide a report to the legislative finance committee relevant to goals and objectives presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency’ and programs’ templates. The report must address the following:

- 1) Progress toward the goals; and
- 2) Attainment of measureable objectives.”

#### **PERFORMANCE AND OTHER REPORTING REQUIREMENTS**

Either alone or in conjunction with the above, the legislature could also require that agencies report to an appropriate body any progress on stated goals and/or performance benchmarks.

“[Agency] shall compile an annual written report regarding the implementation of 2.0 FTE regional investigation positions and on the level of restitution and fines collected. This report shall be presented to the legislative fiscal division and the legislative finance committee by September 30, 2008.”

The legislature might wish to make some other reporting requirement.

“[Agency] shall compile a report on the results of any performance audit done on any prerelease center, regional prison, or private prison. This report shall be provided to the legislative finance committee, the law and justice interim committee, the governor, and the corrections advisory council by December 31, 2008.”

#### **MAKE NECESSARY STATUTORY CHANGES**

Budget decisions by the legislature are sometimes made that require a statutory change. Two examples follow.

- 1) The legislature determines that certain users of services should pay a greater proportion of the costs of operation of the division associated with the service, and adds state special revenue in anticipation of an increase in statutory fees. The companion bill would make the necessary statutory changes to increase the fees.
- 2) The legislature wishes to establish a commission for some purpose. The commission would be funded in HB 2, and established in a companion bill.
- 3) The legislature may wish to allow an expanded use of state special revenue funds. If the legislature wished, for instance, to reduce general fund and replace it with funding from a state special revenue fund, but current statute did not allow that use of the fund, a companion bill could expand the allowed uses.

The legislature does not need to include special language in the companion bill for this type of circumstance. However, it would strengthen the tie to HB 2 and the appropriation if the title included the phrase “An act implementing the provisions of the general appropriations act (etc.) by [doing the following]”. Contingency

language would also be necessary in HB 2 to ensure that the appropriation was not included in HB 2 without the corresponding statutory change.

## **SPECIAL INSTRUCTIONS ON USE OF OR ACCESS TO APPROPRIATIONS**

The following example is taken from work performed by the Post-Secondary Education Policy and Budget (PEPB) committee.

An appropriation could be made for some purpose, and the companion bill could set the conditions under which it could be accessed. (If the legislature is setting instructions on the use of an appropriation, it may wish to condition the appropriation in HB 2.)

- In HB 2 – “Item 1a is a restricted, biennial, one-time-only appropriation to support improvements to the transferability and student data systems as follows:
  - \$645,000 biennial appropriation to support...
  - \$115,000 in FY 2009 to support...”

The companion bill would give authority to a specified committee to make a recommendation to the executive that if the bulleted points have been achieved by a certain date, then the second year appropriation could be released. This same principle could apply to whether or not the appropriation could be considered an on-going part of the base in the next executive budget request. The companion bill would also change the definition of “base budget” to allow this inclusion.

## **AGENCY ACTION**

The legislature could require that an agency take some action during the interim.

“[Agency shall examine priorities for the next biennium for the prevention of dropouts and the reduction of dropout rates in Montana’s public schools. The department shall report on these efforts to the education and local government interim committee before September 1, 2008.”

“[Agency] shall prepare an economic analysis that compares the value of a purchase by the state versus the continued lease by the state of the forensic lab facility located in Missoula. The department shall present this analysis to the legislative finance committee at its first meeting following July 1, 2008.”

## **APPENDIX B**

### **REQUIREMENTS**

This section provides a reference listing of all requirements pertaining to companion bills that must be met.

#### Votes Needed to Request (Under Rules in Effect for the 2005 Legislative Session)

- Subcommittees and HAC: 3/4<sup>th</sup> of all members (not just a majority of the quorum)
- SF&C: Majority of all members

#### Committee Eligible to Make a Request for a Bill

- Individual subcommittees, HAC, or SF&C

#### Timing

- All deadlines pertaining to appropriations bills apply to the companion bill as long as the bill implements provisions of HB 2
  - Transmitted to the Senate: 67<sup>th</sup> legislative day
  - Requests: 75<sup>th</sup> legislative day (SF&C)
  - Senate amendments transmitted to the House: 80<sup>th</sup> legislative day
- There is no requirement that the bill(s) be scheduled with HB 2, but this practice would be the most efficient

#### Number of Companion Bills

- No requirement

#### Content of Bills

- Must implement a provision of HB 2 (see Appendix A for examples)
  - When necessary, there must be contingency language in HB 2 in the event the companion bill fails