



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Legislative Fiscal Analyst
CLAYTON SCHENCK

DATE: May 23, 2006

TO: Members of the Legislative Finance Committee

FROM: Pat Gervais

RE: Department of Corrections Appropriations Transfer Request

In March the Legislative Finance Committee (LFC) received a request for an appropriation transfer of \$11.5 million from FY 2007 to FY 2006 for the Department of Corrections (DOC). The request was made due to cost overruns within the agency including secure care and community corrections. The requested transfer of \$11.5 million equates to 9.6 percent of the department's FY 2006 general fund appropriation, which is about \$120 million.

Issues

While this request raises a number of questions regarding the growth in correctional populations and expenses, LFD staff raises the following two issues as primary concerns.

- 1) The request for appropriation transfer is unnecessary because the department was provided a biennial appropriation for the secure care portion of the department's budget and because these funds may be transferred among programs if necessary. Department staff indicates the request for appropriation transfer was made in an effort to notify the LFC of the significant budgetary shortfalls the department is experiencing.
- 2) The department submitted a mitigation plan as required by statute (attached). The mitigation plan relies on the release of offenders from pre-release centers, probation and parole supervision, and other community placements. The mitigation plan states that "the department recognizes this mitigation process is largely a mathematical exercise and that the steps outlined above are neither desirable nor achievable..." raising concerns that the department does not intend to implement the mitigation plan. 17-7-301(3) MCA requires that the Governor require the agency to implement the plan. Additionally, the mitigation plan prepared by the department does not include implementation of cost saving measures that might be less onerous, such as decreasing administrative, travel, and cellular phone costs and increasing vacancy savings in non-client supervision segments of the department.

Subcommittee Conference Call

A conference call with the members of the 2005 Legislature Joint Appropriation Subcommittee on Corrections and Public Safety was held and a number of questions and concerns were discussed. A summary of that conference call is attached for informational purposes.

Summary

The appropriation transfer requested for the DOC is unnecessary due to the existence of a biennial appropriation. However, the size of the cost overrun for the department (9.6 percent of the FY 2006 general fund appropriation) and indication that a mitigation plan will not be implemented are issues that the LFC may wish to consider. Without efforts to mitigate the growth in expenditures it would seem logical to anticipate a cost overrun and request for supplemental appropriation for the 2007 biennium equal to at least twice the FY 2006 shortfall or about \$23 million.

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Conference Call Summary – April 20, 2006

2005 Legislative Joint Appropriations Subcommittee on Corrections and Public Safety
Discussion the Department of Corrections Request for Appropriation Transfer

The following paragraphs attempt to summarize the content of the discussion held by members of the 2005 Legislature Joint Appropriations Subcommittee on Corrections and Public Safety. This document is not meant to be a transcript of the meeting. However, a tape of the conference call is available from the Legislative Fiscal Division (LFD).

Participating in the conference call were:

Legislators: Rep. T. Callahan, Rep. R. Hawk, Sen. T. Schmidt, Sen. K. Bales, and Sen. S. Gallus. Rep. C. Hiner had another commitment and planned to join the call while it was in progress.

Legislative Fiscal Division Staff: Pat Gervais, Taryn Purdy, Clayton Schenck

Department of Corrections (DOC) Staff: Gary Hamel, Bob Anez, Kara Sperle

Pat began the call by summarizing the request for transfer of appropriation authority, the role of the Legislative Finance Committee (LFC) and the request made of this group by the chairman of the LFC.

The chairman of the LFC requested the members of the 2005 Legislature Joint Appropriations Subcommittees (subcommittee) be consulted regarding the department's request to transfer appropriation authority. Thus, the purpose of today's conference call was to allow the subcommittee members an opportunity to discuss the department's request and to determine whether or not the group would like to provide comments to the LFC regarding this issue.

Items/questions discussed during the conference call included:

- Why the department requested at this time and the impacts of the department's request for a transfer of appropriation authority rather than use of the biennial appropriation provided for secure care
- What portions of the budget had the largest overrun and the portion of the contract bed cost overrun related to county jails
- That Montana's prison population growth rates exceed nation averages
- The mitigation plan and lack of inclusion of costs savings from administrative areas in the plan
- The study bill proposed during the last legislative session and the department's study of the correctional system by a work group of the DOC Advisory Committee
- Corrections as the end of the system and the prison population being a result of the laws passed by the legislature

- Suggestion that the department perhaps ask for half of the amount as an appropriation transfer and achieve savings in the 2nd year of the biennium to offset half
- The impact of the use of an appropriation transfer or biennial appropriation on the base budget for the 2009 biennium
- What the departments 2009 biennium budget may look like and whether or not cost savings from new programs will be realized or if there is so much unfilled need that all beds available will be filled
- The 2007 biennium budget request verses the legislative appropriation and that the budget approved by the legislature exceeded the department (Executive Budget) request in total
- Whether or not the department had a vacancy savings exemption
- Population projections that have increased at a greater rate then estimated during the legislative session
- That the LFC should receive an update from the Corrections Advisory Council's study group on their work
- That LFD staff prepare a summary of the conference call and that summary be forwarded to the LFC for their information

Pat Gervais (LFD) and Gary Hamel (DOC) explained their understanding that the request for appropriation transfer was initiated in accordance with the Governor's Office of Budget and Program Planning (OBPP) wishes in an effort to provide early notice to the LFC of the departments budgetary difficulty. However, use of the biennial appropriation is an option that has essentially the same outcome. Use of either mechanism provides additional appropriation authority for FY 2006 and increases the base budget for the 2009 biennium budget cycle. Any supplemental appropriation of additional funding must be considered and passed by the legislature when it meets in 2007.

Gary Hamel indicated that reductions in other areas of the department would result in a small percentage reduction and the department does not want reduced spending resulting in failure of other segments of the agency. However, some legislators expressed a desire to see a portion of the reductions occur in administrative type costs. Regarding the department's mitigation plan, Gary Hamel expressed that department staff don't believe that the public would go along with the release of prisoners and that it would be difficult to release 3,000 offenders to achieve the savings outlined in the department's mitigation plan.

Various participants had comments about the impact of laws passed by the legislature on the prison population, the complexity of the issues, the high costs of the various options available (secure care and community options), and the fact that some of the short-term options were more expensive than long-term options. The department was also asked about the outlook for the 2009 biennium and whether or not spending would include this increased appropriation level for FY 2006 and further increases or if the impacts of some new programs would begin to decrease future costs. Gary Hamel indicated that it was too early and the department had no target figure for the next biennium budget.

A study of the correctional systems was discussed. A bill was requested but not passed by the last legislature. Rather, the department agreed to pursue portions of the study with a work group of the Corrections Advisory Council. Legislators not participating in the study group expressed an interest for more information on the activities of the advisory council study group and to have a report on this topic and any potential solutions to rising offender populations that the group may have be presented to the LFC. The study group meets in May and will work on a report to the LFC for the June meeting. LFD staff will inform LFC meeting organizers of the desire for a report on this topic at the next LFC meeting.

Participants discussed the level of appropriation approved by the legislature, which was above the executive request, the factors contributing to costs overruns, and variance in population projections. Bob Anez commented about a LFD staff report prepared by Pat a few months ago that indicated that the population estimate used in the legislative appropriation for contract beds was lower than that projected by the department. Pat Gervais did not recall the report including that comparison but did recall that the report included a comparison of population estimates made during the legislative session with current population estimates prepared by the department and that the current population estimates exceeded the estimates made during the legislative budget process.

During the course of the conversation Pat Gervais requested directions from the legislators participating in the call regarding how they would like to proceed in responding to the request from the chairman of the LFC. It was the consensus of the legislators involved that Pat Gervais prepare a summary of the meeting and that this summary be forwarded to the LFC for their information.

Action Items:

- Prepare summary
- Forward finalized summary to the LFC
- Request study group presentation be scheduled for the LFC meeting

Items for further follow-up

- Additional information on cost overruns – what segments and why
- Montana’s correctional population and growth verse national averages
- Outlook for 2009 biennium – compounded increase or will there be savings to offset/reduce growth rates
- Additional information on appropriation verses requested budget (emailed 4/25)
- LFC interest in pursuing study bill