



# Montana Legislative Services Division

## Legal Services Office

Room 110 Capitol Building \* P.O. Box 201706 \* Helena, MT 59620-1706 \* (406) 444-3064 \* FAX (406) 444-3036

DATE: October 26, 2011  
TO: Kris Wilkinson, Fiscal Analyst II  
FROM: Jaret Coles, Legislative Staff Attorney  
RE: Legal Opinion Regarding Interplay of HB 2 and HB 334

### FACTS

During the 62<sup>nd</sup> Legislative Session, House Bill No. 2 (HB 2)<sup>1</sup> was the General Appropriations Act and House Bill No. 334 (HB 334)<sup>2</sup> was a bill that generally revised workers' compensation laws. It is my understanding that HB 334 is anticipated to save agencies money on workers' compensation premiums. Furthermore, in anticipation of these savings, the Legislature placed statutory language in section 7 of HB 334 to reduce appropriations when such an event occurs. The relevant language is codified in section 39-71-403(1)(b)(iv), MCA, and provides as follows:

In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

It is also my understanding that most agencies received appropriation reductions in HB 2 in anticipation of savings from workers' compensation premiums. Using the Legislative Branch as an example, page A-1 of HB 2 provided:

Legislative Services includes a reduction in general fund money of \$8,877 in FY 2012 and \$8,840 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.<sup>3</sup>

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<sup>1</sup> See Ch. 363, L. 2011. HB 2 was initially sent to enrolling on April 13, 2011, and it was returned with the Governor's proposed amendments on April 22, 2011. After the Legislature accepted the proposed amendments, HB 2 was sent to enrolling for a second time on April 29, 2011, and signed by the Governor on May 12, 2011.

<sup>2</sup> See Ch. 167, L. 2011. HB 334 was sent to enrolling on March 30, 2011, and was signed by the Governor on April 12, 2011.

<sup>3</sup> The first version of this language was proposed on the Senate Floor on March 28, 2011, and passed by a vote of 39 to 11. The amendment is located on the Legislative Branch website at:

<http://data.opi.mt.gov/bills/2011/AmdHtmS/HB0002142.HTM>

The [Legislative Fiscal Division Fiscal Report for the Legislative Branch](#) that was prepared after the session states that a “general fund reduction of \$17,717 was applied to this division in anticipation of workers’ compensation savings, and may be allocated branchwide”.<sup>4</sup> As it stands, you estimate that the Legislative Branch will receive a reduction in premiums supported by the general fund for fiscal year (FY) 2012 of approximately \$9,152. However, since HB 2 already reduced the appropriation for FY 2012 by \$8,877, you asked whether this could be used as a “credit” in calculating the required appropriation reduction under HB 334.

### **LEGAL QUESTION**

Is a state agency entitled to apply a “credit” toward the statutorily required HB 334 reduction by taking into account legislative actions in HB 2 for anticipated savings in workers’ compensation premiums?

### **ANSWER**

This is not advisable. The plain language of HB 334 does not provide for a “credit”. Additionally, there is nothing in HB 2 that provides for a “credit”. However, an agency could argue that the statute is ambiguous, in which case it could utilize statutory interpretation to develop an argument that the legislative intent was to reduce the appropriation by the amount of savings and nothing more.

### **ANALYSIS**

#### ***A. PLAIN LANGUAGE OF THE STATUTE***

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 HB 334 provides that in “any year in which the workers’ compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers’ compensation premium was reduced”. There is no language in HB 334 or HB 2 stating that an agency is entitled to a credit for other reductions. Additionally, there are no coordination instructions in HB 2 or HB 334 that take into consideration any reductions by the Legislature in the calculation. Consequently, it is hard to interpret the statute as a whole to mean that any agency that received a general fund reduction in HB 2 is entitled to a “credit” for this reduction.

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<sup>4</sup> [Legislative Fiscal Report – 2013 Biennium, Report From the Legislative Fiscal Division to the Sixty-Second Legislature](#), A-4 (June 2011).

Clearly the safest approach is to calculate the required HB 334 reduction without taking into account any other reductions. As such, using the Legislative Branch as an example, the HB 2 reduction of \$8,877 for FY 2012 would not be taken into account and the Legislative Branch would have less money to operate in the 2013 biennium.

### ***B. LEGISLATIVE INTENT WHEN STATUTE IS AMBIGUOUS***

In the event that an agency desires to utilize the credit, it would presumably do so on the grounds that the language in HB 334 is ambiguous. Legislative intent may be determined in a number of ways when a statute is ambiguous. A court presumes that the Legislature would not pass meaningless legislation, and the court must harmonize statutes relating to the same subject so as to give each effect. The court can look to the legislative history of the statute. Great deference and respect must be given to interpretation of the statute by persons and agencies charged with its administration. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 Mont. 392, 395, 715 P.2d 1056, 1058 (1986), followed in *Albright v. St.*, 281 Mont. 196, 206, 933 P.2d 815, 821-22 (1997); *see also, Winchell v. Dept. of Natural Resources and Conservation*, 1999 MT 11, ¶ 20, 293 Mont. 89, 972 P.2d 1132 (following *Albright*).

As applied here, an agency could argue that the intent of the Legislature in both HB 2 and HB 334 was to reduce agency appropriations in order to account for any savings from workers' compensation reform and nothing more. By not taking into account a credit for the HB 2 reduction, some agencies will effectively receive a double reduction, depending on the actions of the Legislature in HB 2. In order to rely on this position, an agency could rely on the "great deference" given in interpretation of the statute. Additionally, an agency could rely on legislative history and argue that the failure to give a credit is inconsistent with legislative intent. *See State v. Heath*, 2004 MT 126, 321 Mont. 280, 90 P.3d 426 (2004) (reasoning that the statute as drafted was inconsistent with legislative intent).

Proceeding down this path is not the safest approach since section [17-8-103\(1\)](#), MCA, makes it unlawful for a state agency "to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, including any approved, authorized, and valid budget amendment".

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