



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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**Director**  
AMY CARLSON

DATE: May 9, 2018  
TO: Legislative Finance Committee  
FROM: Legislative Fiscal Division staff  
RE: Agency Appropriation Transfer Requests (Supplemental)

In accordance with 17-7-301 MCA, the Governor has submitted potential transfers of appropriations (supplemental appropriations) from FY 2019 to FY 2018, to the Legislative Fiscal Division (LFD). It is the role of the LFD to analyze the proposals and forward them to the Legislative Finance Committee (LFC) for comment. It is the in the purview of the LFC to report to the Governor whether, in the committee's view, the requests meet the statutory criteria and to raise any necessary compliance issues. If the LFC does not provide a report, the Governor (or other approving authority) can authorize the transfer 90 days after the date the request was forwarded to the committee. The LFC does not approve or deny the requests. A set of proposed supplemental appropriations for ten state agencies was submitted to the Legislative Finance Committee (LFC) for review and comment, on March 12, 2018.

The Budget Director has provided three proposals for review and comment, including:

- 1) **DPHHS Supplemental Request:** A move of up to \$20.579 million general fund and \$600,000 state special revenue authority from FY 2019 to FY 2018 in the Department of Public Health & Human Services (DPHHS);
- 2) **OPD Supplemental Request:** Moving up to \$3.0 million general fund authority from FY 2019 to FY 2018 in the Office of Public Defender (OPD); and
- 3) **Technical Base Budget Items:** A variety of technical items across nine agencies to clarify special session impacts on the base budget for the 2021 biennium.

### STATUTORY REQUIREMENTS:

Statute requires two things before a request to move authority from the second year of the biennium to the first year can be made:

- 1) Expenditures must be for an "unforeseen and unanticipated emergency" that causes the appropriation for the year to be insufficient for the operation and maintenance of the agency in that year; and
- 2) The requesting agency must present a plan for reducing expenditures in the second year of the biennium that "allows the agency to contain expenditures within appropriations." Several exceptions to this requirement exist, but are not applicable in these cases.

## DPHHS SUPPLEMENTAL REQUEST

A proposed supplemental appropriation to transfer FY 2019 state special revenue and general fund authority to FY 2018. The state special revenue authority is requested to mitigate the amount of general fund authority needed. This transfer will be in the amount of up to \$20.579 million general fund and \$600,000 state special revenue.

No specific documentation was submitted to directly support this level of supplemental request, but DPHHS does provide a monthly report to the LFD which provides their estimated expenditures and expected surplus or deficit as a result. The February version of this DPHHS budget report was used to provide information to the LFC during the March meeting as a part of the Budget Status Report (BSR), and while this does not fully tie to the supplemental transfer amount, it provides a close approximation. The LFD has assumed that this monthly DPHHS report is the best indicator of the reasons for the supplemental, and has continued to monitor these reports closely.

As reported in the [March Budget Status Report](#), there were a few primary areas contributing to the shortfall in DPHHS. Each of these areas is listed below, with comments regarding the status at that time, compared to the most recent report provided by DPHHS on April 17, 2018.

- Medicaid benefits and claims
  - For the March BSR, Medicaid was being projected by DPHHS to have an \$8.4 million general fund shortfall. The information provided April 17 projects this shortfall to be \$3.2 million, with part of this adjustment explained by a \$2.5 million transfer out of the MDC budget to cover shortfalls in the Medicaid budget for Disability Services
- Montana State Hospital
  - At the time of the March BSR, DPHHS was projecting a \$6.8 million general fund shortfall. This shortfall has also been somewhat mitigated through appropriation transfers and a slight decrease to the projected expenditures
- Vocational Rehab benefits
  - Due to an adjustment to the projected expenditures, this shortfall has been reduced from the previously reported \$3.7 million to a shortfall of \$2.2 million
- Child & Family Services Division administration and benefits
  - The previously reported shortfall totaling \$7.0 million general fund continues as a significant shortfall in the most recent projections from DPHHS

Overall, the BSR provided to the LFC in March reflected a projected shortfall of \$21.8 million general fund, with a state special fund shortfall of almost \$400,000. This is now being projected at \$20.2 million general fund shortfall, but with a surplus of \$4.4 million state special revenue authority across a wide variety of different funds. Keeping in mind that statute requires agencies to spend state special funds before general fund, this would suggest the general fund shortfall is currently projected at \$15.8 million, assuming there is sufficient revenue available in these state special funds.

### ***Statutory Requirement Compliance Review***

MCA 17-7-311(2) requires a review for compliance with the 2 statutory requirements on page 1.

- 1) It is reasonable to assume these expenditures were unforeseen at the time the budget was developed during the 2017 Legislature.
- 2) Statute requires the plan to contain spending within the legislative appropriation, but the plan submitted for DPHHS does not include these provisions.

## ***Possible 2019 Session Supplemental General Fund Appropriation***

This proposal indicates a projected general fund shortfall in DPHHS of \$20.6 million in FY 2018 and \$9.9 million in FY 2019. If the agency transfers the entire \$20.6 million, as requested, from FY 2019 to FY 2018 the remaining appropriation in the second year of the biennium is projected by DPHHS in the supplemental memo to fall \$30.5 million short of anticipated spending.

There are a variety of interactions, pertinent facts and potential consequences related to this request and the supplemental the 2019 Legislature could be faced with, including:

1. The FY 2019 remaining projected shortfall in the supplemental memo implies the need to request a supplemental appropriation of \$30.5 million general fund from the 2019 Legislature. If this estimated FY 2018 supplemental is higher than actually needed, the FY 2019 supplemental may be less, assuming only the required amount is actually transferred from FY 2019 to FY 2018.
2. The Governor's 17-7-140 reductions, as proposed prior to the November 2017 special session, totaled \$18.7 million general fund in DPHHS for FY 2018. It is assumed that the requested supplemental transfer does not replace these amounts. As provided for by special session SB 9, the Governor could come to an agreement with Core Civic and additional funding of \$15.0 million or more could be available to offset a portion of these supplemental requests or other reductions made in the Governor's 17-7-140 proposal.
3. If FY 2018 general fund revenues come in higher than the executive special session assumptions, DPHHS could receive additional FY 2019 appropriations totaling up to \$30.6 million general fund, as a result of special session SB 9. This total amount was based on the special session Governor's 17-7-140 budget reductions made to HB 2, and could restore those specific reductions. If the requested supplemental transfer occurs, this appropriation increase could be used to restore the FY 2019 budget reductions, or to offset the potential supplemental request brought before the 2019 Legislature.

## **OFFICE OF PUBLIC DEFENDER (OPD) SUPPLEMENTAL REQUEST**

A proposed supplemental appropriation to transfer up to \$3.0 million general fund authority from FY 2019 to FY 2018. A capital (death penalty) case results in a significant pressure on the OPD budget, and OPD reports a higher percentage of cases that are felonies involving youth. Additionally, they continue to realize a high employee turnover rate.

### ***Statutory Requirement Compliance Review***

MCA 17-7-311(2) requires a review for compliance with statutory requirements, including the plan to contain spending within the legislative appropriation.

- 1) It is reasonable to assume these expenditures were unforeseen at the time the budget was developed during the 2017 Legislature. The budget for OPD was developed with no base during the 2017 Session, and was coordinated with several other bills intended to restrain the growth in expenditures.
- 2) The plan submitted for OPD does not contain spending within the legislative appropriation.

## ***Possible Supplemental General Fund Appropriation***

This proposal indicates a projected general fund shortfall in OPD of \$3.0 million in FY 2018. If the agency transfers the entire \$3.0 million, as requested, from FY 2019 to FY 2018, the remaining appropriation in the second year of the biennium is currently projected by OPD to fall \$8.0 million short of anticipated spending. This would imply the need to request a supplemental appropriation of \$8.0 million general fund from the next legislature.

There are a variety of interactions, pertinent facts and potential consequences related to this request and the supplemental the 2019 Legislature could be faced with, including:

1. The FY 2019 remaining projected shortfall in the supplemental memo would imply the need to request a supplemental appropriation of \$8.0 million general fund from the 2019 Legislature. If this estimated FY 2018 supplemental is higher than actually needed, the FY 2019 supplemental may be less, assuming only the required amount is actually transferred from FY 2019 to FY 2018. The provided mitigation plan indicates \$3.1 million for a supplemental request is outside of their control. It is not unreasonable to assume other factors will also come into play (just as they appear to have in FY 2018) creating the need for an even greater supplemental in FY 2019. If spending within OPD is not managed sufficiently, consistent with previous biennia, the 2019 Legislature could face a significantly higher supplemental than projected in the submitted mitigation plan.
2. During the 2017 Legislature HB 59, HB 77, and HB 133 made changes both to the structure of OPD itself, as well as to the types of cases and responsibilities of OPD, as part of an effort to reduce the likelihood of a supplemental. Some of these changes have been delayed in implementation and it is possible that some of those savings may be realized in the second half of the biennium. However, implementation may continue to face delays as well.
3. As provided for by special session SB 9, the Governor could come to agreement with Core Civic and additional funding of \$15.0 million or more could be available to offset a portion of these supplemental requests or other reductions made in the Governor's 17-7-140 proposal. The Governor's 17-7-140 reductions, as proposed prior to the November 2017 special session, included no reductions to OPD, so the use of this funding here is limited.

## **TECHNICAL BASE BUDGET ITEMS**

The proposals cross five categories that adjust 2017 Special Session HB 2 or the 2021 biennium base budget as discussed below.

**1. PSC Double Impact.** The Public Service Commission (PSC) is requesting a transfer of \$276,964 from FY 2019 to FY 2018. As previously reported, HB 2 enacted by the November 2017 Special Session inadvertently included a state special appropriation reduction that resulted in a compounded impact to the PSC budget.

**2. DOA Compound Impact.** HB 2 enacted by the November 2017 Special Session included a general fund appropriation reduction that resulted in a compounded impact to the Department of Administration (DOA) budget, thus they are requesting a transfer of \$200,000 general fund from FY 2019 to FY 2018.

**3. Line Item Adjustment.** To better match intended 17-7-140 reductions, OBPP is requesting a transfer of general fund authority from FY 2019 to FY 2018 in four areas, which would later be offset with a corresponding reversion from a separate area in the same agency. The requested transfers include \$141,272 general fund in the Department of Justice, \$120,000 general fund total transfer in the Judicial Branch, and a \$1,816,536 transfer in DPHHS, of which \$726,289 would be general fund.

**4. State Share Calculation.** A transfer of authority from FY 2019 to FY 2018 has been requested for \$62,713 for DPHHS, \$149,688 for the Department of Environmental Quality, \$358,360 for the Department of Fish, Wildlife & Parks, and \$107,508 for the Department of Agriculture to account for a difference in calculation of the 2-month state share holiday for health insurance payments.

**5. Additional Base Budget Adjustment.** DPHHS is requesting a \$300,000 special session reduction that was proposed to be taken out of a one-time-only line item be considered part of their base for the 2021 biennium.

### Table of Proposed Items (Numbered to match above categories)

The following table summarizes the items included in the multiple agency supplemental, sorted to align with the categories described above.

Item	Agency	Amount	Explanation
1	Public Service Commission	\$276,964	PSC Double Count
2	Department of Administration	200,000	DOA Compound Impact
3	Department of Justice	141,272	Line Item Issue
3	Judicial Branch 1	80,000	Line Item Issue
3	Judicial Branch 2	40,000	Line Item Issue
3	Department of Public Health and Human Services	1,816,536	Line Item Issue
4	Department of Public Health and Human Services	62,713	State Share
4	Department of Environmental Quality	149,688	State Share
4	Department of Natural Resources and Conservation	189,720	State Share
4	Department of Fish, Wildlife & Parks	358,360	State Share
4	Department of Agriculture	107,508	State Share
5	Department of Public Health and Human Services	300,000	Base Budget Adjustment
	<b>Total</b>	<b>\$3,422,761</b>	

### Statutory Requirement Compliance Review

MCA 17-7-311(2) requires a review for compliance with statutory requirements, including the plan to contain spending within the legislative appropriation. The submitted proposal does not create a FY 2019 general fund supplemental need. There is however, a recognition that the Public Service Commission will likely need a state special supplemental in FY 2019.

Statute requires supplemental transfers be submitted by the “approving authority” for these agencies. In the case of the Judicial Branch, the executive and OBPP are not the approving authority. The LFD requested clarification from the Judicial Branch to confirm this is their intent, and that the appropriate approving authority has submitted the proposal. To that end, a memo from the Chief Justice is attached.

## **LFC OPTIONS**

1. The LFC may report to the Governor that the requests meet the statutory criteria for a supplemental appropriation transfer in accordance with 17-7-301 MCA, or make any other comments deemed appropriate.
2. There is a ninety day window in which the LFC can respond, and the LFC could request additional information prior to formally responding. Based on a March 12 submission to the LFC, this would place the limit on the ninety day window on June 10. However, statute also requires the LFA to forward the LFC report to the executive within 10 days after LFC consideration, indicating a deadline of May 19 based on your consideration May 9.
3. The LFC may take no action, in which case after ninety days the Governor may make the transfer.

# APPENDIX

## STATUTE

**17-7-311. Proposed fiscal year transfer supplemental appropriation -- procedure.** (1) A proposed supplemental appropriation to transfer appropriations between fiscal years of a biennium and all supporting documentation must be **submitted to the legislative fiscal analyst**. The governor may not approve a proposed fiscal year transfer supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed fiscal year transfer supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed fiscal year transfer supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed fiscal year transfer supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed fiscal year transfer supplemental appropriation **submitted by the governor** for compliance with statutory requirements and standards and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations. The **legislative fiscal analyst** shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed fiscal year transfer supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed fiscal year transfer supplemental appropriation or may return the proposed fiscal year transfer supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed fiscal year transfer supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed fiscal year transfer supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed fiscal year transfer supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed fiscal year transfer supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed fiscal year transfer supplemental appropriation. All other proposed fiscal year transfer supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed fiscal year transfer supplemental appropriation.