

April 4, 2006

Clayton Schenck
Legislative Fiscal Analyst
Room 110 State Capitol
P.O. Box 201711
Helena, Montana 59620-1711

Dear Mr. Schenck:

I am writing in response to your request for an analysis of what constitutes a "plan" for reducing expenditures in the second year of a biennium to allow an agency to contain expenditures within legislative appropriations as required by section 17-7-301(1), MCA. This letter will constitute my analysis.

Section 17-7-301(1), MCA, provides that an agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for Executive Branch proposals by the Budget Director, submit the proposed supplemental appropriation to the Legislative Fiscal Analyst. A plan for reducing expenditures is not required for certain specifically enumerated proposed supplemental appropriations.

Section 17-7-301, MCA, is reflective of section 17-8-103(1), MCA, which provides that it is unlawful for departments to expend, to contract for the expenditure, or to incur any obligation, in any one year, in excess of the legislative appropriation provided for that year or to increase any expenditures, except as specifically provided by law. It is the duty of the departments to keep expenditures, obligations, and liabilities within the amount of the legislative appropriation.

The procedure for a proposed supplemental appropriation is contained in section 17-7-311, MCA. That section provides that 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 the report is not received within 90 calendar days from the date that the proposed fiscal year transfer supplemental appropriation and supporting documentation were forwarded to the Legislative Finance Committee or unless there has been a waiver of the review and report

requirements. The Legislative Fiscal Analyst is required to 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 is required to 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 is required to submit the Legislative Finance Committee's report to the Governor. Upon receipt of the Legislative Finance Committee's written report, the Governor is authorized to 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 returns 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 section 17-7-311, MCA, apply to the resubmitted proposed fiscal year transfer supplemental appropriation. The Legislative Finance Committee does not have the authority to approve or deny a proposed fiscal year transfer supplemental appropriation. It appears that this section should be revised to refer to the "approving authority" rather than the Governor in light of the fact that one of the proposed supplemental appropriations is from the Montana Supreme Court.

Section 17-7-301(3), MCA, provides that upon receipt of the recommendation of the Legislative Finance Committee pursuant to section 17-7-311, MCA, the approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Unless the proposed supplemental appropriation is specifically enumerated in section 17-7-301(2), MCA, the approving authority is required to direct the agency to implement "the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations". Section 17-7-301(5), MCA, provides that the approving authority is required to report to the next Legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the approving authority and is required to request that any necessary supplemental appropriation bills be passed.

An agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation", unless the supplemental appropriation is for a purpose specifically enumerated in section 17-7-301(2), MCA, or unless mandated expenditures that are required by state or federal law will cause the agency to exceed appropriations or available funds. In that event, section 17-7-301(7)(b), MCA, requires the agency to reduce all nonmandated expenditures pursuant to "the plan submitted to the approving authority and the Legislative Fiscal Analyst in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding". An agency may not transfer funds between fund types in order to implement a plan.

There are no statutory specifications concerning the style, format, or content of a "plan" for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. Therefore, the only requirement for a "plan" is that the "plan" must be sufficient to allow the Legislative Fiscal Analyst to **determine the**

expenditures that will be reduced in order to contain spending within legislative appropriations" (emphasis added) as required by section 17-7-311(2), MCA.

With this general statutory background in mind, I will comment on each of the plans for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. The material submitted by the Department of Public Health and Human Services discusses the reasons for the estimated general fund appropriation shortfall and discusses additional potential pressures on the general fund that are not included in the proposed supplemental appropriation request. The document then discusses potential actions as required by section 17-7-301(7)(b), MCA. The document discusses the elimination of the ability to use emergency rulemaking procedures to achieve budget reductions. The document then states that the Department will follow the principles of law contained in section 53-6-101, MCA, in reviewing expenditures. The document then provides a roster of potential areas to be reviewed that includes "several unpalatable items". The document discusses the "obvious disadvantages" to implementing reductions in areas included in the "roster" and states that the Department is exploring "all viable options" to control the effects of decreasing federal funds. The document concludes by stating that a supplemental request is unavoidable unless the programmatic actions addressed in the document "or similarly onerous program reductions" are made. The document then provides that the Department does not consider the "suggestions" to be in the best interests of the state. Because I was unable to determine **the expenditures that will be reduced in order to contain spending within legislative appropriations** (emphasis added), it does not appear that the Department has submitted a "plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations" as required by section 17-7-301(1), MCA.

The documents submitted by the Department of Corrections enumerates 12 "measures" that will be used to "assist with the supplemental situation". While the list contains items such as freezing all out-of-state general fund travel, it also contains other aspirational items such as acquiring federal funding and continuing car pooling efforts. A few of the items may well be **expenditures that will be reduced in order to contain spending within legislative appropriations** (emphasis added), but many of the enumerated items are not. Therefore, it appears that the Department has partially complied with section 17-7-301(1), MCA. I do not offer an opinion on whether the complying items are sufficient to contain spending with the legislative appropriation to the Department. You are in a much better position than I to make that determination.

The documents submitted by the Department of Revenue provide that as required by statute the Department has developed a plan for reducing expenditures in fiscal year 2007. The documents go on to provide that the Department has actually developed two plans. The documents provide that the plans are "unacceptable" and discuss the negative impacts of both plans. The documents conclude that the reductions are not in the best interest of the state in maintaining the equity and integrity of its tax system. Once again, I am unable to determine **the expenditures that will be reduced in order to contain spending within legislative appropriations** (emphasis added). Therefore, it does not appear that the Department has complied with section 17-7-301(1), MCA. The documents submitted by the Montana Supreme Court enumerate 7 areas in which the Judiciary will, to the extent allowed by law, stop providing funding effective July 1, 2006. This

appears to be a "plan". However, I do not offer an opinion on whether the complying items are sufficient to contain spending within the legislative appropriation.

I hope that I have adequately addressed your questions. If you have additional questions or if I can provide additional information, please feel free to contact me.

Sincerely,

Gregory J. Petesch
Director of Legal Services