



**Montana Legislative Services Division**  
**Legal Services Office**

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Amy Carlson  
To:  
From: Julie Johnson, LFC Staff Attorney  
Re: Use of Core Civic Funds  
Date: August 30, 2018

**INTRODUCTION**

You have asked me to address for what purpose the executive may use the approximately \$34 million in funds received from renegotiating the contract for the Shelby Prison with Core Civic.

**QUESTION PRESENTED**

For what purposes can the funds received from the contract negotiations between Core Civic and the State be used?

**BRIEF ANSWER**

\$15 million must be deposited into the fire suppression account.<sup>1</sup> The remainder of approximately \$19 million must be deposited into a state special revenue account to fund essential services as defined in Senate Bill No. 9 (SB 9) from the November 2017 Special Session. These funds are appropriated to the Governor's office and may not be used to fund an appropriation that is greater than the introduced version of House Bill No. 2 (HB 2) from the Special Session.<sup>2</sup>

However, the State also received enough general fund revenue in fiscal year 2018 to trigger general fund appropriations to state agencies for fiscal year 2019. For example, the appropriation for the Department of Public Health and Human Services is \$30.5 million. However, these appropriations are similarly restricted and may not be used to fund an appropriation that is greater than the introduced version of HB 2.

As long as none of the contingent appropriations are used to fund an appropriation that is greater than the introduced version of HB 2, it appears that the executive may choose from which source, the general fund or the private prison renegotiation account, or some mix thereof, to fund essential services as defined in SB 9.

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<sup>1</sup> These funds may subsequently be transferred to the general fund pursuant to Section 5 of House Bill No. 6, which provided: "For the biennium ending June 30, 2019, the state treasurer shall transfer any revenue received in the fire suppression account provided for in 76-13-150 in excess of \$40 million from the fire suppression account to the general fund."

<sup>2</sup> References to a bill, including House Bill No. 2, in this memo refer to a bill from the November 2017 Special Session unless otherwise noted.



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**BACKGROUND FACTS AND CONTROLLING LEGISLATION**

SB 9 addresses the use of any potential funds received from Core Civic in the event the State renegotiated the contract for the Shelby Prison. Section 1 of SB 9 provides:

- (1) There is a private correctional facility contract renegotiation account in the state special revenue fund. All money received by the state and any savings realized by the state from contract renegotiations between the state and private correctional facility contractors must be deposited as follows:
  - (a) up to \$15 million must be deposited in the fire suppression account provided for in 76-13-150; and
  - (b) after \$15 million has been deposited as provided in subsection (1)(a), all excess money must be deposited in the private correctional facility contract renegotiation account and may be appropriated by the legislature to fund essential services.

Essential services are defined in Section 1(3)(a) of SB 9:

- (a) (i) "Essential services" means governmental services:
  - (A) delivered:
    - (I) to the most vulnerable populations;
    - (II) to families, children, seniors, and individuals with disabilities; and
    - (III) to ensure a continuum of care allowing individuals to remain in the least restrictive environment;
  - (B) that were reduced or eliminated through appropriation reductions after introduction of House Bill No. 2 in the house of representatives;
  - (C) delivered through one-time-only expenditures to mitigate impacts from reductions to general fund appropriations in House Bill No. 2. Appropriations from the account provided for in subsection (1) are not intended to become a part of the base budget as provided in 17-7-102 for the biennium beginning July 1, 2019.<sup>3</sup>

The Legislature appropriated the funds in the contract renegotiation account to the governor's office. HB 2 at A-5 states:

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<sup>3</sup> Unfortunately, subsections (A), (B), (C), are not joined by either the word "and" or "or". However, it appears that these subsections are to be read in the disjunctive given that ensuring a continuum of care is not typically funded through a one-time-only expenditure.



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For the biennium ending June 30, 2019, there is appropriated the total amount of funds in the private correctional facility contract renegotiation account to the governor's office of budget and program planning for the purpose of funding essential services as defined in [section 1 of Senate Bill No. 9]. As provided in [section 1 of Senate Bill No. 9], this appropriation is restricted and may not be used to fund governmental services for any appropriation in an amount greater than the introduced version of [this act].

As part of the parties' renegotiated agreement, Core Civic will pay \$34 million to the State, \$19 million of which will be deposited into the private prison renegotiation account. However, this \$19 million is not the only source with which to fund essential services in the 2019 fiscal year. General fund money is also available to restore agency funding based on a second contingent appropriation.

HB 2 appropriated general fund to state agencies for fiscal year 2019 if general fund revenues in fiscal year 2018 exceeded a certain amount as provided in Section 5 of Senate Bill No. 9. HB 2 at E-14 states:

Any general fund allocated to an agency pursuant to Senate Bill No. 9 are appropriated to that agency for the fiscal year beginning July 1, 2018. These appropriations may not be used to increase any appropriation to an amount greater than the appropriation contained in the introduced version of [this act].

**ANALYSIS**

Given the clear directive in Senate Bill No. 9, \$15 million must be deposited into the fire suppression account and the remainder must be deposited into the private correctional facility contract renegotiation account. Funds in this state special revenue account may only be used to fund appropriations for essential services.

Typically funds in the state special revenue account should be used to fund appropriations for essential services before expending any of the general fund appropriation under § 17-2-108, MCA.<sup>4</sup> However, the state special revenue appropriation for essential services is made to the governor's office and not to any particular agency and therefore it can be argued that

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<sup>4</sup> Section 17-2-108, MCA, provides that "an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations."



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§ 17-2-108, MCA, does not apply in this case.

It appears that the executive has the option to restore essential services from funds in either the private prison renegotiation account or the general fund for fiscal year 2019, as long as it does not fund governmental services for any appropriation in an amount greater than in the introduced version of HB 2. In theory, the executive could decide to restore all funding for essential services through the general fund appropriation and leave all of the \$19 million in the private prison renegotiation account.

Finally, if the executive chooses to fund essential services from the private prison renegotiation account, it should be recalled that appropriations from the account are not intended to become a part of the base budget for the next biennium.