



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

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To: Members of the Legislative Finance Committee  
From: Julie Johnson, Staff Attorney  
Re: Section 17-7-140, MCA, and Legal Review of Recommended Reductions  
Date: September 29, 2017

The budget director has made recommendations to Governor Bullock to reduce general fund expenditures in accordance with § 17-7-140, MCA.<sup>1</sup> The first section of this memo provides a broad overview and background of § 17-7-140, MCA.<sup>2</sup> The second section of the memo identifies recommendations for reductions made to the Governor that may raise potential legal concerns. The final section addresses considerations for the next legislative session. This memo does not address policy concerns.

**I. OVERVIEW AND BACKGROUND OF SECTION 17-7-140, MCA**

Article VIII, section 9, of the Montana Constitution requires a good faith attempt on the part of the Legislature to contain appropriations within anticipated revenue, which includes the balance in accounts that are subject to appropriation. The 2003 Legislature enacted Senate Bill No. 483 as Chapter 607, Laws of 2003. This legislation amended § 17-7-131, MCA, to require the legislatively adopted budget to be limited so that a positive ending general fund balance exists at the end of the biennium.

Section 17-7-140, MCA, provides that in the event of a projected general fund budget deficit, the Governor, taking into account certain enumerated criteria, shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium is a certain percentage of all general fund appropriations for the second fiscal year of the current biennium.<sup>3</sup> The percentage depends on when in the biennium the Governor directs the spending reductions:

- 6% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session (even-numbered year)
- 3% in October of the year preceding a legislative session (even-numbered year)
- 2% in January of the year in which a legislative session is convened (odd-numbered year)
- 1% in March of the year in which a legislative session is convened (odd-numbered year)

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<sup>1</sup> The full text of § 17-7-140, MCA, is attached at the end of this memorandum for reference.

<sup>2</sup> Jaret Coles with the Legislative Services Division drafted an excellent 17-page memorandum on § 17-7-140 reductions in 2010 when Governor Schweitzer implemented reductions pursuant to the section. Portions of this memo incorporate information contained in his memo dated February 10, 2010.

<sup>3</sup> Section 17-7-140, MCA, was enacted by Chapter 787, Laws of 1991, and as initially enacted, gave the Governor authority to reduce individual appropriations during a shortfall, with certain enumerated exceptions. The section was heavily amended following a decision by a state district court, in *Nicholson v. Stephens*, Cause No. BDV-91-1864 (1st Judicial District, 1991), wherein the court concluded the statute failed "to provide adequate guidance to the Governor." *Nicholson*, slip op. at 5.

An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. § 17-7-140(1)(b), MCA. Departments or agencies headed by elected officials or the Board of Regents may not be required to reduce general fund spending by a percentage greater than the average percentage of general fund spending reductions required for the total of all other executive branch agencies. § 17-7-140(1)(b), MCA. The Legislature may exempt from a reduction an appropriation item within a program<sup>4</sup> or may direct that the appropriation item may not be reduced by more than 10%. Id. Section 5 of House Bill No. 2 (HB 2) from the 2017 Session defines a program as follows:

As used in [this act], “program” has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinarily numbered with an Arabic numeral.

Additionally, § 17-7-140(2), MCA, provides that the Governor may not order reductions in spending for:

- (a) payment of interest and principal on state debt;
- (b) the legislative branch;
- (c) the judicial branch;
- (d) the school BASE funding program, including special education;
- (e) salaries of elected officials during their terms of office; and
- (f) the Montana school for the deaf and blind.

Finally, § 17-7-140 (1)(c), MCA, provides:

Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

In this case, it is presumed that the Governor will direct reductions just months after the 2017 legislative session has concluded, and therefore, the projected ending fund balance the Governor must ensure is 6% of the general fund appropriations for the second fiscal year of the biennium, which is approximately \$142 million.

Furthermore, as noted above, an agency may not be required to reduce general fund spending for any program by more than 10% during a biennium. § 17-7-140(1)(b), MCA. In the 2017 Session, section 12 of Senate Bill No. 261 provided for budget reductions if certain revenue triggers were met, which they were. These cuts amended session law and reduced nearly all general fund appropriations contained in HB 2. Therefore, the 10% maximum programmatic

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<sup>4</sup> Section 17-7-102(11), MCA, states: ""Program" means a principal organizational or budgetary unit within an agency."

cuts under § 17-7-140, MCA, are based on the appropriations as revised under Senate Bill No. 261 and not the amounts contained in HB 2 at the time it was signed into law.

## **II. POTENTIAL LEGAL CONCERNS**

The majority of the proposed cuts fall squarely within the legal parameters established by § 17-7-140, MCA. However, there are certain recommendations that may raise potential legal concerns and are discussed below. These concerns are distilled into three main categories: (1) statutory conflict; (2) constitutional implications; and (3) contract impairment.

### **A. STATUTORY ISSUES**

Section 17-8-103(2), MCA, explicitly provides that "[i]n no event does a condition or limitation contained in an appropriation act amend any other statute." Therefore, the Governor may not impose a general fund expenditure reduction under the authority granted to the office under § 17-7-140, MCA, that directly conflicts with state law. This is the same restriction that prohibits the Legislature from amending statute in HB 2. Some of the reductions recommended to the Governor appear to conflict with statute and are addressed below in order of the agency's section in HB 2.

## **SECTION A**

### **1. Department of Commerce**

It has been recommended that the Department of Commerce reduce a \$200,000 annual appropriation to the Montana Manufacturing Extension Center by \$100,000 in each year of the biennium and to transfer the difference (of \$100,000 in each year) to the general fund. It has also been recommended that a \$10,000 appropriation for Brownfield spill grants be eliminated and that the \$10,000 be transferred to the general fund. Both of these appropriations are line items in HB 2.

These recommendations appear to conflict with statute as both envision transferring money from a state special revenue account that is funded by coal severance tax trust funds. § 17-5-703(4), MCA. This state special revenue account is codified at § 90-1-205, MCA, which provides:

**90-1-205. Economic development special revenue account.** (1) There is an economic development state special revenue account. The account receives earnings from the big sky economic development fund as provided in 17-5-703. The money in the account may be used only as provided in this part.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department. Of the money that is deposited in the account that is not used for administrative expenses:

(a) 75% must be allocated for distribution to local governments and tribal governments to be used for job creation efforts; and

(b) 25% must be allocated for distribution to certified regional development corporations, economic development organizations that are located in a county that is not part of a certified regional development corporation, and tribal governments. (Emphasis added.)

Transferring money from this account into the general fund is not an enumerated purpose in the part. Moreover, neither of these two recommendations constitutes a general fund spending reduction authorized in § 17-7-140, MCA. Rather, both represent a general fund enhancement. An enhancement to the general fund is not authorized in § 17-7-140, MCA, and may conflict with statute as discussed in the "Miscellaneous" section later in this memo.

## **SECTION B**

One of the recommended reductions is to eliminate comprehensive health care case management for foster children in Missoula, Cascade, and Yellowstone Counties. The Department of Public Health and Human Services (DPHHS) has stated that this elimination may result in the state not being compliant with the Fostering Connections to Success and Increasing Adoptions Act of 2008, 110 P.L. 351, 122 Stat. 3949. This federal law amended parts B and E of title IV of the Social Security Act to improve outcomes for children in foster care and improve incentives for adoption, among other purposes. To the extent that eliminating case management in the three counties violates this federal law, the reduction could conflict with statute.

Another recommendation for DPHHS is to reduce provider rates that are set in administrative rule. DPHHS has already proposed rules to reduce certain provider rates, and the Children, Families, Health, and Human Services Interim Committee (CFHHS), which oversees the administrative rulemaking process for DPHHS, has informally objected to the proposed rate reductions. Under the Montana Administrative Procedure Act (MAPA), an informal objection can delay the adoption of a proposed rule up to approximately 6 months. § 2-4-305(9), MCA. At its September 2017 meeting, CFHHS instructed its legal staff to draft a formal objection letter to be discussed at its next meeting in November. If CFHHS does file a formal objection to the rule, DPHHS must file its response within 14 days. § 2-4-406, MCA. If CFHHS files its objection with the Secretary of State, the burden of proving the validity of the rules shifts to DPHHS in the event of a lawsuit challenging the validity of the rule. *Id.* Therefore, any recommendation to reduce rates that are set in administrative rule will be similarly reviewed by CFHHS and be subject to both the informal and formal objection processes under MAPA.

## **SECTION C**

It has been recommended that the Department of Environmental Quality eliminate a full-time equivalent (FTE) who works in the opencut mine permitting process, which the agency acknowledges would put it at risk of missing statutory deadlines set forth in § 82-4-432, MCA.

Nevertheless, the agency would have to meet statutory deadlines unless and until the Legislature amended those deadlines.

## **SECTION D**

### **1. Department of Justice**

General fund expenditure reductions within the Department of Justice will be determined by Attorney General Fox because he is an elected official. § 17-7-140(1)(b), MCA. The Department of Justice is not required to reduce general fund spending by a percentage greater than the average percentage of general fund spending reductions required for the total of all other executive branch agencies. Id.

The agency has recommended the possible closure of the State Crime Laboratory in Billings. However, § 44-3-301(1), MCA, provides that "[t]he laboratory shall establish a Yellowstone County branch." This statute also provides that "[t]he laboratory director shall determine the purposes, duties, and functions of the Yellowstone County branch, but priority must be given to the relief of the backlogs of chemistry and toxicology." The closure of the Billings crime lab appears to conflict with statute.

### **2. Office of State Public Defender**

It has been suggested that the Office of State Public Defender (OPD) reduce general fund expenditures by discontinuing the use of contract attorneys to represent indigent defendants who have been charged with an offense for which incarceration is a possible penalty. OPD acknowledges that the "action may cause speedy trial issues and disruption to the judicial system." The Montana Public Defender Act provides that one of the purposes of the act is to "ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner." § 47-1-102(5), MCA. If OPD is unable to provide adequate representation to indigent defendants without contract attorneys, the proposed reduction could potentially conflict with statute.

### **3. Department of Corrections**

#### **a. Apply Law Retroactively**

It has been recommended that the Department of Corrections retroactively apply Senate Bill No. 63 (SB 63); however, it is unclear what portion of the bill the department seeks to apply

retroactively. Nevertheless, the effective date of SB 63 is May 19, 2017, when the Governor signed it into law. Section 1-2-109, MCA, provides that "[n]o law contained in any of the statutes of Montana is retroactive unless expressly so declared." Therefore, in order for SB 63 to be applied retroactively, the Legislature would have to amend session law to expressly declare it retroactive.

b. 30-Day Deadline for Presentence Investigations

It has been recommended that funding for six new FTEs authorized by the Legislature in the 2017 session be eliminated. These FTEs are charged with drafting presentence investigation reports (PSIs). Section 1 of Senate Bill No. 60 amended § 46-18-111, MCA, to, as of October 1, 2017, require that "a preliminary or final presentence investigation and report must be available to the court within 30 days of the plea or the verdict or finding of guilty" except in cases where additional information is required. Unless and until Senate Bill No. 60 is amended, the department must comply with the 30-day deadline for PSIs.

## SECTION E

### **1. Office of Public Instruction**

General fund expenditure reductions within the Office of Public Instruction (OPI) will be by Superintendent Arntzen because she is an elected official. § 17-7-140(1)(b), MCA. The Office of Public Instruction is not required to reduce general fund spending by a percentage greater than the average percentage of general fund spending reductions required for the total of all other executive branch agencies. Id.

It has been recommended that OPI reduce the general fund appropriation for combined block grants to school districts by \$2.8 million per fiscal year. These block grants, however, are mandatory under § 20-9-630, MCA. This section provides: "The office of public instruction shall provide block grants to school districts in accordance with this section" and the "combined fund block grant is equal to the amount received in fiscal year 2017. . ." Therefore, in order to make this recommended reduction, the Legislature would have to suspend the block grants for the remainder of the biennium.

As a sidenote, it appears that the majority of OPI's non-exempt general fund appropriations for its Local Education Activities Program (Program 9), which total \$29.4 million in fiscal year 2018, are similarly mandated to be expended under law and cannot be reduced without legislative approval. For example, not only are the combined block grants (which total \$11.7 million for fiscal year 2018) mandatory under § 20-9-630, MCA, but the transportation reimbursements to school districts (which total \$11.8 million in fiscal year 2018) are also

mandatory under § 20-10-141, MCA. The coal-fired generating unit closure mitigation block grant of \$1.69 million in fiscal year 2018 also must be distributed pursuant to section 19 of House Bill No. 647. Therefore, OPI may be challenged in making cuts of \$2.9 million in Program 9 because the majority of its general fund appropriations cannot be reduced without legislative approval.

## **2. Montana State Library**

According to the Montana State Library, the recommended budget reductions for the agency could result in the complete elimination of a statutory program at the State Library. Under § 22-1-212(1), MCA, "[t]he state library shall administer a state publications depository library program to identify, acquire, catalog, preserve, and provide access to state publications." The state library is also charged to "work with all federal, state, local, private, and tribal entities to develop and maintain land information" and to "coordinate the development of geographic information system standards for creating land information." § 90-1-404 (b) and (h), MCA. The loss of additional FTEs may result in the elimination of a statutory program, according to the agency, and could therefore conflict with statute.

## **3. Montana Historical Society**

It has been recommended that the Montana Historical Society reduce general fund expenditures in two of its programs in excess of the 10% maximum, with a reduction of 13.8% to the Museum Program and a reduction of 48.8% to the Publications Program in fiscal year 2018. Recommended reductions to these programs in fiscal year 2019 are 18.8% and 50.5% respectively. However, as discussed in the following section, the Governor cannot direct a cut to a program in excess of 10% pursuant to §17-7-140, MCA. Moreover, any "voluntary" cut to a program above 10% may not be used to calculate the percentage to be applied to "departments or agency headed by elected officials or the board of regents" under § 17-7-140(1)(b), MCA.

## **MISCELLANEOUS**

### **1. Programmatic Cuts in Excess of 10%**

In the case where an agency has offered to make a cut to a program in excess of 10%, the agency may have discretion to make a cut in excess of 10% to one of its programs; however, § 17-7-140, MCA, specifies that the Governor cannot direct a cut to a program in excess of 10%. Additionally, a "voluntary" cut to a program above 10% cannot be used to calculate the average percentage to be applied to "departments or agency headed by elected officials or the board of regents" under § 17-7-140(1)(b), MCA, as doing so would distort the calculation to be applied to those entities. It appears that the recommendations for cut for the following programs, besides

those mention in the section on the Montana Historical Society, exceed 10% per program: (1) Department of Revenue, Director's Office and Citizen's Services; and (2) Department of Corrections, Secure Custody Facilities.

## 2. Reductions in Expenditures to Other Funds

Section 17-7-140, MCA, addresses reductions in general fund spending, not spending cuts from other funds that eventually increase the general fund balance. There are a couple of instances where the recommendation to the Governor is a reduction of spending from a fund other than the general fund in order to increase the general fund. This potentially does not comport with the express language of § 17-7-140(1), MCA<sup>5</sup>, which provides:

(1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to **reduce general fund spending** for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to **reduce general fund spending** by a percentage greater than the percentage of **general fund spending reductions** required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to **reduce general fund expenditures**. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that **receives a general fund appropriation** to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. (Emphasis added.)

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<sup>5</sup> As noted by Jaret Coles in his 2010 memo, "the legislative history suggests that the primary reason for amending section 17-7-140, MCA, was in response to *Nicholson v. Stephens*, Cause No. BDV-91-1864 (1st Judicial District, 1991). In *Nicholson*, Judge Sherlock developed a laundry list of reasons why the previous version of 17-7-140, MCA, was unconstitutional. One of the reasons was for 'its failure to provide adequate guidance to the Governor.' *Nicholson*, slip op. at 5. Another reason was the fact that there was 'no establishment of legislative priorities as to what funds should be safeguarded by the Governor'. Moreover, the court stressed that the statute was too permissive, as there was no requirement on the Governor to act during a deficit. With this background in mind, one can appreciate the importance of the statutory language that limits general fund spending reductions to a 10% level on a program-by-program basis. If section 17-7-140, MCA, is used to reduce spending for funds other than the general fund, then it can be argued that the statute does not provide enough guidance and that it is too permissive."

For example, it has been recommended that the Department of Revenue reduce operating costs for the Liquor Control Division. However, operating costs for this program are paid from proprietary funds, and not the general fund. See HB 2, A-4. Thirty four and a half percent of the net revenue from the sales of liquor licenses are then allocated to the general fund. Section 16-1-404(2)(a), MCA. Therefore, the proposed reduction in operating costs in the Liquor Control Division is not a reduction to general fund expenditures as contemplated in § 17-7-140, MCA, and potentially conflicts with statute.

## **B. CONSTITUTIONAL CONSIDERATIONS**

### **1. Office of State Public Defender**

It has been suggested that the Office of State Public Defender reduce general fund expenditures by no longer using contract attorneys to represent indigent defendants who have been charged with an offense for which incarceration is possible. The Office of State Public Defender has acknowledged that the "action may cause speedy trial issues and disruption to the judicial system." These cuts could implicate both federal and state constitutional rights.

The Sixth Amendment of the United States Constitution and Article II, section 24, of the Montana Constitution guarantee the fundamental right to the assistance of counsel and the right to a speedy trial. *State v. Craig*, 274 Mont. 140, 906 P.2d 683 (1995) (citing *State v. Langford*, 267 Mont. 95, 99, 882 P.2d 490, 492 (1994) (overruled on other grounds by *State v. Gallagher*, 2001 MT 39, 304 Mont. 215, 19 P.3d 817). To the extent that the discontinuation of hiring contract attorneys to represent indigent defendants in Montana impinges on these rights, there may be a constitutional issue.

## **C. POTENTIAL CONTRACTUAL IMPAIRMENT**

The budget director has made recommendations to reduce expenditures that may result in contract impairment issues. The Contract Clause of the Montana Constitution provides that "[n]o ex post facto law nor any law impairing the obligation of contracts . . . shall be passed by the legislature." Art. II, sec. 31, Mont. Const. Similarly, the Contract Clause of the United States Constitution states that "[n]o state shall . . . pass any . . . law impairing the obligation of contracts." Art. I, sec. 10, U.S. Const. The Montana Supreme Court uses a three-part test when analyzing a Contract Clause challenge:

- (1) Is the state law a substantial impairment to the contractual relationship?
- (2) Does the state have a significant and legitimate purpose for the law?

(3) Does the law impose reasonable conditions which are reasonably related to achieving the legitimate and public purpose?

*Seven Up Pete Venture v. State*, 2005 MT 146, ¶ 41, 327 Mont. 306, 114 P.3d 1009.

Additionally, when a state is a party to a contract or if its self-interest is at stake, a court uses a heightened level of scrutiny when evaluating the third prong of the test. *City of Billings v. County Water Dist.*, 281 Mont. 219, 229, 935 P.2d 246, 252 (1997) (citing *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 25-26, 97 S. Ct. 1505, 1519, 52 L. Ed. 2d 92, 111-12 (1977)).

It appears that the budget director has recommended reductions that may impair contracts to which the Department of Corrections and the Department of Public Health and Human Services are parties. It appears that other agencies may seek to renegotiate contracts or reduce the amount of services provided by contractors. While state agencies are allowed to renegotiate contracts, they cannot unilaterally amend a contract without raising a possible impairment of contract issue. The language of each particular contract is controlling.

## **1. Department of Corrections**

### a. Limit Payments to County Facilities to \$69

It has been recommended that the Department of Corrections (DOC) limit the amount it pays to a county facility for incarceration to \$69 per day. House Bill No. 2 currently provides: "It is the intent of the legislature that the department of corrections pay no more than \$69 per day to house inmates in county jails." However, it is believed that the DOC has entered into contracts with some counties that require the DOC to pay the "costs of incarceration," which may exceed \$69 per day. Paying less than what is prescribed in the contract may raise an impairment concern.

### b. Other DOC Contracts

It has been recommended that the DOC reduce rates that are set in other contracts as well. This includes rates for treatment providers, offender services, prerelease centers, private prisons, and county detention centers. It has also been recommended that the DOC suspend payment of the \$9.14 daily rate provided for in its contract with Corrections Corporation of America. To the extent that a contract has expired or is about to expire, and the provider is being asked to contract for a new lower rate, the DOC can reduce rates if the parties so agree. However, to the extent that the DOC unilaterally reduces rates that are set forth in a current contract, those reductions could raise a potential impairment of contract issue. The language of each individual contract govern the consequences of breaching that contract.

## **2. Department of Public Health and Human Services**

It has been recommended that DPHHS reduce rates set in contract or even eliminate contracts with a variety of providers. Some examples include reducing rates in Community Rehab Programs (CRP) agreements from a flat \$64 per hour to \$37.88 per hour for individual services and \$21.90 per hour for group services, and eliminating a contract for Orientation & Mobility (O&M) skill instruction. While some of these rates may be set in administrative rules, some may be set in contract. To the extent that a contract has expired or is about to expire, the parties can agree to contract for lower rates. However, to the extent that DPHHS unilaterally reduces rates that are set forth in a current contract, those reductions could raise a potential impairment of contract issue. Again, the language of each individual contract would govern the breach of the that contract.

It has been recommended that the Child Support Enforcement Division impose mandatory furloughs. Other agencies have suggested voluntary staff furloughs, which is permissible. However, to the extent that mandatory furloughs run counter to the terms in an employee's collective bargaining agreement with the employer, a potential contract impairment issue exists.

## **III. CONSIDERATIONS FOR THE NEXT SESSION**

Even with an ordered reduction in the spending of appropriations, the appropriations still exist in law until the expiration of the biennium for which the appropriations were made or unless and until the Legislature amends session law in a special session or the regular session starting in January 2019. The Legislature may decide whether to adjust appropriations for the biennium beginning July 1, 2017, to reflect any gubernatorially ordered reductions in spending.

**"17-7-140. Reduction in spending.** (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(c), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least:

(i) 6% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;

(ii) 3% of the general fund appropriations for the second fiscal year of the biennium in October of the year preceding a legislative session;

(iii) 2% of the general fund appropriations for the second fiscal year of the biennium in January of the year in which a legislative session is convened; and

(iv) 1% of the general fund appropriations for the second fiscal year of the biennium in March of the year in which a legislative session is convened.

(b) An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(c) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The report must be submitted in an electronic format. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The recommendations must be provided in an electronic format. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education;

(e) salaries of elected officials during their terms of office; and

(f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than:

(i) 5% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;

(ii) 1.875% in October of the year preceding a legislative session;

(iii) 1.25% in January of the year in which a legislative session is convened; and

(iv) 0.625% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid and the cost of the state's wildland fire suppression activities exceeding the amount statutorily appropriated in 10-3-312, and anticipated reversions.

(4) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor.

(5) If the budget director certifies a projected general fund budget deficit, the governor may authorize transfers to the general fund from certain accounts as set forth in subsections (6) and (7).

(6) The governor may authorize transfers from the budget stabilization reserve fund provided for in 17-7-130. The governor may authorize \$2 of transfers from the fund for each \$1 of reductions in spending.

(7) If the budget director certifies a projected general fund budget deficit, the governor may authorize transfers to the general fund from the fire suppression account established in 76-13-150. The amount of funds available for a transfer from this account is up to the sum of the fund balance of the account, plus expected current year revenue, minus the sum of 1% of the general fund appropriations for the second fiscal year of the biennium, plus estimated expenditures from the account for the fiscal year. The governor may authorize \$1 of transfers from the fire suppression account established in 76-13-150 for each \$1 of reductions in spending."