



AN ACT GENERALLY REVISING ELEMENTS OF THE BUDGETING PROCESS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; DEFINING THE BASE BUDGET FOR THE HUMAN AND COMMUNITY SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT EMPLOYEES OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND ARE EXEMPT FROM VACANCY SAVINGS; REVISING REPORTING REQUIREMENTS FOR THE OFFICE OF STATE PUBLIC DEFENDER TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING BENCHMARKS FOR CATEGORIZING PETROLEUM STORAGE TANK RELEASE SITES AS RESOLVED AND THE ELIMINATION OF THE BASE BUDGET WHEN BENCHMARKS ARE NOT MET; ESTABLISHING REPORTING REQUIREMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL REGARDING THE CLOSURE OF PETROLEUM STORAGE TANK RELEASE SITES AS IT RELATES TO THE BASE BUDGET AND THE BENCHMARKS; AMENDING SECTIONS 17-7-102 AND 47-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-102, MCA, is amended to read:

"17-7-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

- (1) "Additional services" means different services or more of the same services.
- (2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.
- (3) "Approving authority" means:
 - (a) the governor or the governor's designated representative for executive branch agencies;
 - (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
 - (c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies;

or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature. For the biennium beginning July 1, 2011, the term includes items specified in section 85, Chapter 489, Laws of 2009.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) (a) "Present law base" means, subject to subsection (10)(b), that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(i) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

- (ii) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (iii) inflationary or deflationary adjustments;
- (iv) elimination of nonrecurring appropriations; and
- (v) items specified in section 85, Chapter 489, Laws of 2009.

(b) For the budget for the 2011 legislative session, present law base must be adjusted by reducing general fund budgets by the equivalent of that portion of the 2% across-the-board reduction assessed by the 61st legislature on selected agencies that was allocated by those agencies to personal services in the 2011 biennium. The director of the governor's office of budget and program planning and the legislative fiscal analyst shall agree on a mechanism for determining how agencies have allocated this reduction.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2011--sec. 35(1), Ch. 486, L. 2009; sec. 82, Ch. 489, L. 2009.)

17-7-102. (Effective July 1, 2011) Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies;

or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature. For the biennium beginning July 1, 2013, the base budget for the human and community services division in the department of public health and human services may also include the state general fund equivalent to expenditures in fiscal year 2012 of one-time-only TANF federal special revenue funding appropriated during the 2013 biennium to the division for the purpose of child care.

(b) The term does not include:

(i) funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met;

(ii) funding for petroleum storage tank leak prevention if the accountability benchmarks in [section 4] are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new

proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

- (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
- (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (c) inflationary or deflationary adjustments; and
- (d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020--sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

- (a) the governor or the governor's designated representative for executive branch agencies;
- (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
- (c) the speaker for the house of representatives;
- (d) the president for the senate;
- (e) appropriate legislative committees or a designated representative for legislative branch agencies;

or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

- (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
- (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (c) inflationary or deflationary adjustments; and
- (d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 2. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports. (1)

There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(v) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

(9) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative finance committee. The report must include unduplicated count data for ~~both employee and contract attorneys~~ all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010:~~

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010."~~

Section 3. Montana school for the deaf and blind exempt from vacancy savings. (1) Vacancy savings may not be imposed on authorized positions in the Montana school for the deaf and blind, as described

in 20-8-101.

(2) Each fiscal year, the board shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized positions in the Montana school for the deaf and blind. At a minimum, the report must include the following information:

- (a) the number of positions that were filled during the year and the average salary paid at hire; and
- (b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant.

(3) For purposes of this section, the following definitions apply:

(a) "Authorized positions" means those positions included in the list of current authorized positions that the board is required to maintain under 2-18-206.

(b) "Board" means the board of public education created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(c) "Vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

Section 4. Benchmarks -- budget action taken if not met. (1) Categorizing petroleum storage tank release sites as resolved is a higher priority than investigation of new releases unless the new release is an imminent danger to the health and safety of the public.

(2) The department shall develop a list of open release sites prioritized by danger to the health and safety of the public and anticipated date of categorizing the sites as resolved.

(3) (a) The cumulative benchmarks that are provided in subsection (3)(b) must be met. If the benchmarks are not met, money appropriated for petroleum storage tank leak prevention may not be included in the department's base budget, as defined in 17-7-102, for the current biennium.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Resolved Sites
December 31, 2011	45
July 1, 2012	90
December 31, 2012	135
July 1, 2013	180

December 31, 2013	225
July 1, 2014	270
December 31, 2014	315
July 1, 2015	360

(4) The department shall report to the environmental quality council established by 5-16-101 at the next regularly scheduled meeting of the council following the passing of each benchmark date in subsection (3)(b).

(5) As used in this section, the following definitions apply:

(a) "Petroleum storage tank" has the same meaning as prescribed in 75-11-302.

(b) "Release" has the same meaning as prescribed in 75-11-302.

(c) "Resolved" means a determination by the department that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment.

Section 5. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Coordination instruction. If House Bill No. 2 is not passed and approved, then [this act] is void.

Section 8. Effective date. [This act] is effective July 1, 2011.

Section 9. Termination. [Section 1(4)(a)] terminates June 30, 2013.

- END -

I hereby certify that the within bill,
HB 0613, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 613

INTRODUCED BY D. ROBERTS

AN ACT GENERALLY REVISING ELEMENTS OF THE BUDGETING PROCESS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; DEFINING THE BASE BUDGET FOR THE HUMAN AND COMMUNITY SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT EMPLOYEES OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND ARE EXEMPT FROM VACANCY SAVINGS; REVISING REPORTING REQUIREMENTS FOR THE OFFICE OF STATE PUBLIC DEFENDER TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING BENCHMARKS FOR CATEGORIZING PETROLEUM STORAGE TANK RELEASE SITES AS RESOLVED AND THE ELIMINATION OF THE BASE BUDGET WHEN BENCHMARKS ARE NOT MET; ESTABLISHING REPORTING REQUIREMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL REGARDING THE CLOSURE OF PETROLEUM STORAGE TANK RELEASE SITES AS IT RELATES TO THE BASE BUDGET AND THE BENCHMARKS; AMENDING SECTIONS 17-7-102 AND 47-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.