

## MEMORANDUM

To: State Board of Corrections (SBOC)

From: Andrew Black, AAG

Date: July 14, 2014

Re: Applicability of 34-A M.R.S. § 1812(4) to FY2014

In the last legislative session, the Legislature enacted Public Law, Chapter 598 (L.D. 1824), which contained the following emergency preamble:

Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State Board of Corrections is not functioning as intended by the Legislature to provide a coordinated county jail system; and

Whereas, this legislation is necessary to address the improper functioning as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now therefore . . . .

P.L. 2013, ch. 598 (emergency, effective May 1, 2014). Following the Legislature's override of the Governor's veto, the legislation became effective on May 1, 2014.

One new provision of this legislation is subsection 1812(4) of title 34-A. That subsection reads in its entirety as follows:

**4. Inmate boarding revenues.** Except as provided in this subsection, federal or state inmate boarding revenues are retained by the county jail facility generating the funds and are not offset against the state appropriation otherwise due that county under the approved allocation formula. Federal inmate boarding revenues are retained by the county up to budgeted amounts approved as part of the county correctional services budget procedure pursuant to Title 30-A, section 710 and the remaining federal revenues must be used as follows:

A. A county jail holding jail debt on or before July 1, 2008 shall transfer 25% of any remaining federal revenue to the County

Corrections Capital Improvement Fund under section 1811 and apply 75% to the jail debt until the full discharge of that debt.

B. A county jail without any jail debt must transfer 75% of any remaining federal revenues to the County Corrections Capital Improvement Fund under section 1811.

34-A M.R.S. § 1812(4) (2014).

An issue regarding the applicability of subsection 1812(4) has arisen that will require the SBOC to interpret the statute. The issue can be framed as follows:

**Whether and to what extent subsection 1812(4) applies to federal boarding revenues earned in FY2014?**

At first glance, this may seem obvious. It was emergency legislation that took effect on May 1, 2014. The effective date is two months prior to the conclusion of FY2014—the first point at which anyone could determine the extent of a county’s receipt of boarding revenues above the budgeted amount for FY2014.

The following phrasing, however, creates some ambiguity and opens the door to potential alternative interpretations: “Federal inmate boarding revenues are retained by the county up to budgeted amounts approved as part of the county correctional services *budget procedure pursuant to Title 30-A section 710* and the remaining federal revenues must be used as follows . . . .” Because section 710 was also amended by this same legislation, there is a colorable argument that this reference is strictly to the amended section 710. The argument would be that subsection 1812(4) does not apply to FY2014 because the FY2014 budgeted amount was not approved as part of the budget procedure pursuant to the amended section 710. The substance of the amendments to section 710, however, appear limited to the automatic approval of proposed budgets that do not increase by more than the budget growth factor.

Below are some hypotheticals that illustrate why resolving this issue is important.

**Hypo #1.** County A still has jail debt and also received federal boarding revenues above the budgeted amounts for FY2014. Absent subsection 1812(4), the SBOC has interpreted the statutory scheme as prohibiting counties from using any portion of their federal boarding revenues to pay down county jail debt. Unless subsection 1812(4) applies to FY2014, the SBOC’s interpretation (which is at issue in the appeal pending before the Supreme Judicial Court) is that County A is prohibited from using any of these revenues to pay down county jail debt. Is this what the Legislature intended with its emergency legislation?

**Hypo #2.** County B’s FY2014 budgeted federal boarding revenues are \$500,000. Its FY2014 budgeted distribution from the Operational Support Fund (OSF) is \$1,000,000. Its actual federal boarding revenues are \$1,000,000. Prior to the adoption of the legislation, County B applied its projected excess federal boarding revenues to its operations and forewent \$500,000 in OSF distributions. If subsection 1812(4) applies to FY2014, County B can retain 25% of its federal

boarding revenues above the budgeted amount ( $.25 \times \$500,000 = \$125,000$ ), but must transfer 75% of the excess ( $.75 \times \$500,000 = \$375,000$ ) to the Capital Improvement Fund, not the OSF. Where is County B going to get this \$375,000? Can it now recapture the full OSF distribution that it forewent earlier because the new subsection 1812(4) states that federal boarding revenues “are not offset against the state appropriation otherwise due that county under the approved allocation formula” (a formula that will not exist until adopted by the SBOC through rulemaking)? If that is the case, where does the SBOC come up with funds for the OSF distribution? Is this what the Legislature intended?

Does the dilemma raised by these two hypotheticals suggest the possibility of a third interpretation? Is it possible that the Legislature could have intended paragraph 1812(4)(A) (applicable to jails with jail debt) to apply to FY2014 and paragraph 1812(4)(B) (applicable to counties without jail debt) to apply after FY2014?

In an attempt to gain assistance in resolving this legal issue, on June 17, 2014, the SBOC instructed Executive Director Ryan Thornell to invite the county jails to submit written legal arguments as to what the appropriate interpretation should be of the application of subsection 1812(4). Executive Director Thornell did so by emailing a letter to all county jail administrators on June 18, 2014. The email requested that the jail administrators share the attached letter with other interested parties in the county, and the letter requested that any responses be sent to the SBOC by July 2, 2014. To date, only one response has been received, a letter from Sheriff Clark of Hancock County dated June 18, 2014. In addition, I contacted Curtis Bentley who was the legislative analyst for L.D. 1824 to see what insight he could offer on this issue. He could not recall any discussion about whether and to what extent subsection 1812(4) was to apply to FY2014.