

# MAINE STATE LEGISLATURE

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Date: 5/28/9

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 844, L.D. 1224, Bill, "An Act Regarding the Operation of County Jails and the State Board of Corrections"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**Sec. 1. 17-A MRSA §1175, first ¶**, as amended by PL 2005, c. 527, §14, is further amended to read:

Upon complying with subsection 1, a victim of a crime of murder ~~or stalking~~ or of a Class A, Class B or Class C crime or of a Class D crime under chapters 9, 11 and 12 for which the defendant is committed to the Department of Corrections or to a county jail or is committed to the custody of the Commissioner of Health and Human Services either under Title 15, section 103 after having been found not criminally responsible by reason of insanity or under Title 15, section 101-B after having been found incompetent to stand trial must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon release from commitment under Title 15, section 101-B or upon discharge under Title 15, section 104-A and must receive notice of any conditional release of the defendant from institutional confinement, including probation, supervised release for sex offenders, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or similar program, administrative release or release under Title 15, section 104-A.

**Sec. 2. 30-A MRSA §708**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

**§708. Alternative fiscal year**

The county commissioners of a county may adopt a July 1st to June 30th fiscal year. A county may raise one or 2 taxes during a single valuation, if the taxes raised are based on appropriations made for a one or more county fiscal year ~~that does not exceed years~~ none of which exceeds 18 months. A county fiscal year may extend beyond the end of

**COMMITTEE AMENDMENT**

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1 the current tax year. The county commissioners, when changing the county's fiscal year,  
2 may for transition purposes, adopt one or more fiscal years not longer than 18 months  
3 each.

4 **Sec. 3. 30-A MRSA §924, sub-§3**, as amended by PL 2001, c. 349, §6, is further  
5 amended to read:

6 **3. Other uses; working capital.** After compliance with subsection 2, the county  
7 commissioners may use any remaining unencumbered surplus funds to fund a county  
8 charter commission, as provided in section 1322, subsection 4, or to establish or fund a  
9 capital reserve account under section 921, including a corrections services capital reserve  
10 account, as provided in section 5801. If not used for these purposes, any remaining  
11 surplus funds may not be expended but must be retained as working capital for the use  
12 and benefit of the county except that correctional unencumbered surplus may not lapse to  
13 the county's noncorrectional fund balance but must be carried forward as the county or  
14 regional jail authority correctional services fund balance. Correctional services funds  
15 may be expended only for corrections services.

16 **Sec. 4. 30-A MRSA §932, sub-§3**, as enacted by PL 2007, c. 653, Pt. A, §13, is  
17 amended to read:

18 **3. Change of fiscal year.** County In addition to and without limiting subsections 1  
19 and 2, the county commissioners in a county that is changing from a January to December  
20 fiscal year to a July to June fiscal year pursuant to section 708 are authorized to borrow  
21 money for the purpose of a transitional budget by issuing bonds or notes in anticipation of  
22 taxes. The A tax anticipation note issued pursuant to this subsection covers the 6-month  
23 period of January 1st to June 30th prior to the first year of a fiscal year beginning on July  
24 1st. County commissioners may borrow pursuant to this subsection an amount that does  
25 not exceed the taxes anticipated from the transitional budgets, and the period of  
26 borrowing may not exceed 5 years. County commissioners may issue a tax anticipation  
27 note pursuant to this subsection only once a year.

28 Prior to February 15th of the transitional budget year, the municipal officers of each  
29 municipality in the county shall notify the county clerk in writing of the manner in which  
30 the municipality intends to pay its portion of the transitional county budget for the period  
31 of January 1st to June 30th. At the time of notification, the municipal officers shall  
32 indicate whether the municipality intends to pay its full share of the January 1st to June  
33 30th transitional budget by December 31st of that year in accordance with section 706 or  
34 whether the municipality intends to pay its share of the transitional budget in equal  
35 payments over 2, 3, 4 or 5 years by December 31st of the 2nd, 3rd, 4th or 5th year after  
36 the calendar year in which the transition year occurs, ending no later than 5 years  
37 December 31st of the 5th year after the calendar year in which the transition year occurs.  
38 In accordance with the payment schedule indicated in its notification, a municipality not  
39 paying its full portion of the transitional budget in that year shall make payments for the  
40 transitional budget to the county at the time the municipality makes its payment to the  
41 county for the current year. Each municipality is responsible to the county for the  
42 municipality's share of the January 1st to June 30th transitional budget and any interest  
43 incurred by the county for borrowing on behalf of the municipality in anticipation of  
44 deferred payment of taxes as provided in this subsection.

1           **Sec. 5. 30-A MRSA §1659**, as amended by PL 2005, c. 68, §1, is repealed.

2           **Sec. 6. 30-A MRSA §1659-A** is enacted to read:

3           **§1659-A. Community confinement monitoring program**

4           The sheriff of each county shall establish a program to permit certain inmates to serve  
5 a portion of their sentence of imprisonment in community confinement monitored by the  
6 county or a contract agency or another county or its contract agency. The county may  
7 contract only with a community confinement monitoring agency approved by the State  
8 Board of Corrections.

9           **1. Petition.** A sheriff, upon written request from an inmate eligible for participation  
10 in a community confinement monitoring program and recommended by the jail  
11 administrator, may assign the inmate to participate in a community confinement  
12 monitoring program. At the time of granting this privilege, the sheriff shall determine  
13 whether the inmate is responsible for the cost of participating in the program based on the  
14 inmate's ability to pay.

15           **2. Eligibility.** Inmates are eligible to participate in a community confinement  
16 monitoring program if:

17           A. The inmate's residence is located within the State and in a location that does not  
18 in any way restrict the adequate monitoring of the inmate;

19           B. The inmate has been sentenced to the county jail;

20           C. The inmate is not serving a sentence for a sex offense or a sexually violent  
21 offense as defined under Title 34-A, section 11203;

22           D. The inmate has a verified security classification level of "medium" or "minimum"  
23 and scores "moderate" or "less" on a validated risk assessment tool as defined by the  
24 State Board of Corrections;

25           E. The inmate serves a minimum of 1/3 of the term of imprisonment, or, in the case  
26 of a split sentence, a minimum of 1/3 of the unsuspended portion, prior to  
27 participating in a community confinement monitoring program. In calculating the  
28 amount of time served, good time or deductions earned under Title 17-A, section  
29 1253 and time reductions earned for charitable or public works projects under section  
30 1606 must be counted; and

31           F. The inmate agrees to abide by the conditions of release pursuant to this section  
32 and any additional conditions imposed by the sheriff or jail administrator.

33           **3. Participation requirements.** The following requirements of this subsection  
34 apply to inmates participating in a community confinement monitoring program.

35           A. Each inmate assigned to community confinement pursuant to this section shall  
36 participate in a structured program of work, education or treatment. Participation in a  
37 community confinement monitoring program may not be solely for the purpose of  
38 living at home.

39           B. At a minimum, the inmate shall report in person at least once per week to a  
40 community confinement monitor, even if being electronically monitored.

1 C. The jail administrator, or a designee, shall restrict in advance any travel or  
2 movement limiting the inmate's travel to specific times and places directly related to  
3 approved employment, formal education, job search, public service work, treatment  
4 or other specific purposes.

5 D. The inmate shall agree to searches of the inmate's person, residence, electronic  
6 monitoring equipment, vehicle, papers and effects and any property under the  
7 inmate's control, without a warrant and without probable cause, for items prohibited  
8 by law or by condition of participation in the program or otherwise subject to seizure  
9 or inspection upon the request of the jail administrator, a community confinement  
10 monitor or any law enforcement officer without prior notice. The sheriff or jail  
11 administrator may prohibit the inmate from residing with anyone who does not  
12 consent to a search or inspection of the residence to the extent necessary to search or  
13 inspect the inmate's person, residence, electronic equipment, papers and effects.

14 E. The inmate may not use alcohol or illegal drugs or other illegal substances and  
15 may not abuse alcohol or abuse any other legal substance.

16 F. The inmate shall submit to urinalysis, breath testing or other chemical tests  
17 without probable cause at the request of the jail administrator or a community  
18 confinement monitor.

19 G. If stopped or arrested by a law enforcement officer, the inmate shall notify that  
20 officer of the inmate's participation in a community confinement monitoring program.  
21 Within one hour of having been stopped or arrested, the inmate shall notify the jail  
22 administrator or a community confinement monitor.

23 H. The inmate may not violate state or federal criminal law or any conditions of the  
24 inmate's release.

25 I. As a condition of participation of an inmate in a community confinement  
26 monitoring program, the sheriff may, based upon an inmate's ability to pay, require  
27 the inmate to pay a fee including an electronic monitoring fee, if applicable, a  
28 substance testing fee, if applicable, or both. The fee charged may include the costs  
29 associated with a community confinement program for people who do not have the  
30 financial resources to pay the fees.

31 J. The inmate shall sign a statement verifying that the inmate understands and agrees  
32 to all of the conditions of release and participation in a community confinement  
33 monitoring program.

34 **4. Termination of the privilege.** The sheriff, jail administrator or a community  
35 confinement monitor may terminate an inmate's participation in a community  
36 confinement monitoring program at any time and return the inmate to the custody of the  
37 county jail for any violation of the conditions of the inmate's release or upon the loss of  
38 an appropriate residence on the part of the inmate.

39 **5. Violations; penalties.** The following penalties apply to violations of this section.

40 A. An inmate who willfully violates a condition of release commits a Class D crime.

41 B. An inmate who leaves or fails to return within 12 hours to that inmate's residence  
42 or other designated area in which that inmate is monitored is guilty of escape under

1 Title 17-A, section 755. A sentence received for this crime or for escape is subject to  
2 the requirements of Title 17-A, section 1256, subsection 1.

3 **6. Minimum standards supervision of inmates in the community confinement**  
4 **monitoring program.** The State Board of Corrections shall establish minimum policy  
5 standards for the monitoring of inmates in the community confinement monitoring  
6 program.

7 **7. Program funding.** Funds collected pursuant to this section must be forwarded to  
8 an account designated by the State Board of Corrections for the purpose of supporting  
9 pretrial, diversion or reentry activities. Community confinement monitoring program  
10 funds must be accounted for by the county through the normal budget process.

11 **8. Terminally ill or incapacitated inmate.** The sheriff may grant the privilege of  
12 participation in a community confinement monitoring program to an inmate who does not  
13 meet the requirements of subsection 2, paragraphs C and E if the jail's treating physician  
14 has determined that the inmate has a terminal or severely incapacitating medical  
15 condition and that care outside the jail is medically appropriate. Except as set out in this  
16 subsection, the inmate shall live in a hospital or other appropriate care facility, such as a  
17 nursing facility, residential care facility or facility that is a licensed hospice program  
18 pursuant to Title 22, section 8622 approved by the sheriff. As approved by the sheriff, the  
19 inmate may receive hospice services from an entity licensed pursuant to Title 22, chapter  
20 1681, subchapter 1 or other care services and, subject to approval by the sheriff, may live  
21 at home while receiving these services. The sheriff may exempt an inmate participating  
22 in community confinement monitoring pursuant to this subsection from any requirements  
23 under subsection 3 that the sheriff determines to be inapplicable. The inmate shall  
24 provide any information pertaining to the inmate's medical condition or care that is  
25 requested by the sheriff at any time while the inmate is in the community confinement  
26 monitoring program. If the sheriff determines that the inmate has failed to fully comply  
27 with a request, or if at any time the jail's treating physician determines that the inmate  
28 does not have a terminal or severely incapacitating medical condition or that care outside  
29 the jail is not medically appropriate, the sheriff shall terminate the inmate's participation  
30 in the community confinement monitoring program. Except as set out in this subsection,  
31 all other provisions of this section apply to community confinement monitoring pursuant  
32 to this subsection.

33 **9. Effective date.** This section is effective January 1, 2010.

34 **Sec. 7. 30-A MRSA §1660, sub-§2,** as amended by PL 2001, c. 659, Pt. F, §2, is  
35 further amended to read:

36 **2. Information on releases.** The report required in this section must include the  
37 following information for each county corrections facility about releases of inmates from  
38 the facility pursuant to sections 1605, 1606 and ~~1659~~ 1659-A and former section 1659  
39 during the prior calendar year:

- 40 A. The total number of inmates who were granted the privilege of release;
- 41 B. The number of inmates that were granted the privilege of release for each of the
- 42 following purposes and the nature of the crimes committed by those inmates:
  - 43 (1) Employment;

- 1 (2) Participation in public works-related projects;  
2 (3) Participation in a home-release monitoring program; and  
3 (3-A) Participation in a community confinement monitoring program; and  
4 (4) All other purposes;

5 C. The number of inmates who requested and were denied the privilege of release for  
6 each of the following purposes and the nature of the crimes committed by those  
7 inmates:

- 8 (1) Employment;  
9 (2) Participation in public works-related projects;  
10 (3) Participation in a home-release monitoring program; and  
11 (3-A) Participation in a community confinement monitoring program; and  
12 (4) All other purposes;

13 D. With respect to each inmate who was granted the privilege of release and who  
14 subsequently had the privilege revoked:

- 15 (1) The total number of such inmates;  
16 (2) The purpose for which the release was granted;  
17 (3) The entity that revoked the privilege;  
18 (4) The reasons for the revocation; and  
19 (5) Whether the revocation was appealed and the result of that appeal; and

20 E. Any other information that the Commissioner of Corrections believes appropriate  
21 to accurately inform the Legislature about sheriffs' handling of release decisions.

22 **Sec. 8. 34-A MRSA §1001, sub-§9**, as enacted by PL 1983, c. 459, §6, is  
23 repealed and the following enacted in its place:

24 **9. Holding facility.** "Holding facility" means a facility or part of a building used for  
25 the detention of adult pretrial detainees prior to arraignment, release or transfer to another  
26 facility or authority for periods of up to 48 hours. "Holding facility" also means a county  
27 jail or part of a jail used for the detention of adult inmates, whether detained pending a  
28 trial or other court proceeding or sentenced for periods of up to 72 hours excluding  
29 Saturday, Sunday and legal holidays and excluding days during which the inmate is at  
30 court.

31 **Sec. 9. 34-A MRSA §1404, sub-§7** is enacted to read:

32 **7. Budget review.** The commissioner shall provide the board with its adult  
33 correctional and adult probation services biennial and supplemental budget proposals in a  
34 timely fashion.

1           **Sec. 10. 34-A MRSA §1405, sub-§2, ¶E**, as enacted by PL 2007, c. 653, Pt. A,  
2 §29, is amended to read:

3           E. The person becomes eligible for furloughs, work or other release programs,  
4 participation in public works and charitable projects ~~and~~, home-release monitoring  
5 and community confinement monitoring programs as authorized by Title 30-A,  
6 sections 1556, 1605, 1606 and ~~1659~~ 1659-A and Title 30-A, former section 1659  
7 for a person sentenced to imprisonment in a county jail or work or other release  
8 programs, furloughs and supervised community confinement for a person sentenced  
9 to a correctional facility as authorized by sections 3033, 3035 and 3036-A, whichever  
10 is applicable, and may apply pursuant to the rules governing the sending facility.

11           **Sec. 11. 34-A MRSA §1803, sub-§1, ¶B**, as enacted by PL 2007, c. 653, Pt. A,  
12 §30, is amended to read:

13           B. Develop reinvestment strategies within the unified correctional system to improve  
14 services and reduce recidivism; ~~and~~

15           **Sec. 12. 34-A MRSA §1803, sub-§1, ¶C**, as enacted by PL 2007, c. 653, Pt. A,  
16 §30, is amended to read:

17           C. Establish boarding rates for the unified correctional system, except boarding rates  
18 for federal inmates; ~~and~~

19           **Sec. 13. 34-A MRSA §1803, sub-§1 ¶D**, is enacted to read:

20           D. Review department biennial and supplemental budget proposals affecting adult  
21 correctional and adult probation services and submit recommendations regarding  
22 these budget proposals to the joint standing committee of the Legislature having  
23 jurisdiction over criminal justice and public safety matters and the joint standing  
24 committee of the Legislature having jurisdiction over appropriations and financial  
25 affairs.

26           **Sec. 14. 34-A MRSA §1803, sub-§4**, as enacted by PL 2007, c. 653, Pt. A, §30,  
27 is amended to read:

28           **4. Certificate of need.** The board shall review and may approve any future public or  
29 private construction projects. The board shall establish a certificate of need process used  
30 for the review and approval of any future public or private capital correctional  
31 construction projects. A public or private correctional construction project may not be  
32 undertaken unless the board issues a certificate of need in support of that project. The  
33 board shall adopt rules governing the procedures relating to the certificate of need process  
34 and financing alternatives. Rules adopted pursuant to this subsection are major  
35 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

36           **Sec. 15. 34-A MRSA §1805, sub-§3, ¶B**, as enacted by PL 2007, c. 653, Pt. A,  
37 §30, is amended to read:

38           B. Any net county assessment revenue in excess of county jail expenditures in  
39 counties where changes in jail operations pursuant to board directives under section  
40 1803 have reduced jail expenses. Any net revenue in excess of county or regional jail  
41 expenditures resulting from efficiencies generated by the independent actions of a



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county or regional jail remains with the county's or regional jail authority's correctional services fund balance;

**Sec. 16. 34-A MRSA §3036-A, sub-§10**, as amended by PL 2005, c. 68, §2, is further amended to read:

**10. Terminally ill or incapacitated prisoner.** With the consent of the prisoner, the commissioner may permit a prisoner committed to the department to be transferred from a correctional facility to supervised community confinement without meeting the requirements of subsection 2, paragraphs B and C if the ~~facility's treating physician~~ department's director of medical care has determined that the prisoner ~~is terminally ill~~ has a terminal or severely incapacitating medical condition and that care outside the ~~a~~ correctional facility for the remainder of the prisoner's illness is medically appropriate. Except as set out in this subsection, the prisoner shall live in a hospital or other appropriate care facility, such as a nursing facility, residential care facility or a facility that is a licensed hospice program pursuant to Title 22, section 8622, approved by the commissioner. As approved by the commissioner, the prisoner may receive hospice services from an entity licensed pursuant to Title 22, chapter 1681, subchapter 1 or other care services provided by an entity approved by the commissioner and, subject to approval by the commissioner, may live at home while receiving these hospice services. The commissioner may exempt a prisoner transferred to supervised community confinement pursuant to this subsection from any mandatory condition under subsection 3 that the commissioner determines to be inapplicable. The prisoner shall provide any information pertaining to the prisoner's medical condition or care that is requested by the commissioner at any time while the prisoner is on supervised community confinement. If the commissioner determines that the prisoner has failed to fully comply with a request or if at any time the department's director of medical care determines that the prisoner does not have a terminal or severely incapacitating medical condition or that care outside a correctional facility is not medically appropriate, the commissioner shall revoke the transfer to supervised community confinement.

**Sec. 17. 34-A MRSA §3036-A, sub-§11** is enacted to read:

**11. Revocation of transfer.** The commissioner may revoke a transfer to supervised community confinement at any time for any reason in the commissioner's discretion.

**Sec. 18. 34-A MRSA §3261, sub-§4**, as amended by PL 1999, c. 583, §21, is further amended to read:

**4. Duties of the warden.** The warden shall:

- A. ~~File the warrant and record, as provided by Title 15, section 1707, with the warden's return on the warrant in the warden's office; and,~~
- B. ~~Cause a copy of the warrant of commitment to be filed in the office of the clerk of court from which it was issued.~~

**Sec. 19. 34-A MRSA §3407, sub-§4**, as amended by PL 1999, c. 583, §26, is further amended to read:

**4. Duties of the superintendent.** The superintendent shall:

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- 1 A. File the ~~warrant and record~~, as provided by Title 15, section 1707, ~~with the~~
- 2 ~~superintendent's return on the warrant~~ in the superintendent's office; ~~and,~~
- 3 B. ~~Cause a copy of the warrant of commitment to be filed in the office of the clerk of~~
- 4 ~~court from which it was issued.'~~

**SUMMARY**

6 This amendment replaces the bill and implements recommendations of the State  
7 Board of Corrections as reported to the Joint Standing Committee on Criminal Justice and  
8 Public Safety pursuant to the Maine Revised Statutes, Title 34-A, section 1803,  
9 subsection 11. Specifically, the amendment does the following.

10 It expands victim notification of a prisoner's release to include notice to victims of the  
11 release of those convicted of Class D crimes under chapter 9, 11 or 12 of the Maine  
12 Criminal Code.

13 It clarifies that counties adopting a July 1st to June 30th fiscal year may, as one  
14 option to transition to a 12-month fiscal year, adopt a fiscal year of no more than 18  
15 months and collect one or 2 tax assessments during that period.

16 It specifies that counties may use unencumbered surplus funds from corrections  
17 operations to fund a corrections services capital reserve account. It also clarifies that  
18 county corrections unencumbered surplus funds remain as the correctional services fund  
19 balance separate from the county's noncorrectional fund balance.

20 It authorizes counties that adopt a July 1st to June 30th fiscal year to adopt a 6-month  
21 transitional budget. Counties may borrow to fund this transitional budget. A  
22 municipality may chose to pay its share of the transitional budget in one, 2, 3, 4 or 5  
23 annual increments. This language allows counties to borrow annually a nontaxable tax  
24 anticipation note to fund the cost of the 6-month transitional budget.

25 It repeals the Home Release Monitoring Program and enacts a new community  
26 confinement monitoring program. The community confinement monitoring program is  
27 established to permit inmates in a county jail to serve a portion of their sentence of  
28 imprisonment in an approved community confinement program.

29 It repeals the definition of "holding facility" and replaces it with a new and more  
30 comprehensive definition.

31 It clarifies the responsibility of the Commissioner of Correction to provide the  
32 departmental budgets for adult prison and probation services to the Board of Corrections  
33 in a timely fashion.

34 It amends the duties of the State Board of Corrections to include the review of the  
35 Department of Corrections' biennial and supplemental budget proposals affecting adult  
36 correctional and probation services and to submit its recommendations regarding these  
37 budgets to the joint standing committees of the Legislature having jurisdiction over  
38 criminal justice and public safety matters and appropriations and financial affairs.

39 It clarifies that a certificate of need must be approved by the board before a public or  
40 private construction project can be undertaken.

**COMMITTEE AMENDMENT**

1 It amends a provision in the State Board of Corrections Investment Fund to specify  
2 that any net revenue in excess of county or regional jail expenditures resulting from  
3 efficiencies generated by the independent actions of a county or regional jail remains with  
4 the county's or regional jail authority's correctional services fund balance.

5 It amends the statutes that currently allow the Department of Corrections to transfer a  
6 terminally ill prisoner to supervised community confinement and the sheriff to transfer a  
7 terminally ill prisoner to home release monitoring by adding similar authority to transfer  
8 a prisoner with a severely incapacitating medical condition.

9 It makes explicit the discretion of the commissioner to revoke supervised community  
10 confinement.

11 It also eliminates the requirement for the warden of the Maine State Prison and the  
12 superintendent of the Maine Correctional Center to cause a copy of the warrant of  
13 commitment to be filed in the court from which it was issued. This filing is unnecessary.

14 **FISCAL NOTE REQUIRED**  
15 **(See attached)**



# 124th MAINE LEGISLATURE

LD 1224

LR 201(02)

**An Act Regarding the Operation of County Jails and the State Board of Corrections**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Criminal Justice and Public Safety**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

The additional costs to the Department of Corrections and the State Board of Corrections can be absorbed utilizing existing budgeted resources.