

HB 2 THE BARBARIAN

How to Make HB 2 Implement Public
Policy as Determined by the Legislature



November 2010

Legislative
Fiscal
Division

Legislative Fiscal Division



www.leg.mt.gov/css/fiscal

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PURPOSE AND SCOPE

Working with appropriations is a specialized undertaking that requires thorough knowledge in a number of areas. Successfully meeting legislative goals means examining agency and program budgets, determining the appropriate course of action, and providing a balance that includes flexibility and control.

The purpose of this document is to provide House Appropriations and Senate Finance members, as well as any other interested legislators, with a reference manual to supplement training on the specialized skills needed to work with appropriations. It is designed for use in conjunction with the document entitled "Understanding State Finances and the Budgeting Process". That document explains many of the terms and concepts used in this manual, as well as their applications to budgeting and appropriations. It is available on the Internet and through the Legislative Fiscal Division at the locations listed below.

The manual is divided into five sections.

1. **Staff Resources:** An introduction to your Legislative Fiscal Division staff complete with a discussion of the ways in which they can assist the legislature.
2. **Appropriations Basics:** A brief discussion of appropriations and budget basics to set the stage.
3. **Subcommittee Role and Structure:** A discussion of the duties, responsibilities, and structure of the House Appropriations and Senate Finance subcommittees, which do the majority of the extensive, detailed work on the General Appropriations Act.
4. **Show Me the Money:** A discussion of the way appropriations are established for each type of expenditure, as well as various legislative obligations and options for action.
5. **HB 2:** A description of the General Appropriations Act and the appropriations tools available to make this document effective.

Legislators and others interested in more information are urged to contact the Legislative Fiscal Division, Room 110A of the State Capitol, telephone 444-2986.

The division's web address is: <http://leg.mt.gov/css/fiscal/default.asp>

Section 1

Staff Resources

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LEGISLATIVE FISCAL DIVISION STAFF

Members of the Legislative Fiscal Division (LFD) staff, each of whom specializes in particular agencies, also serve as staff to the House Appropriations and Senate Finance committees, and to all subcommittees. Each subcommittee has a lead LFD staff person who is responsible for assisting the chair in duties relative to overall subcommittee organization. (Staff members from the Office of Budget and Program Planning attend all subcommittee meetings as representatives of the Governor.)

LFD staff members have a range of expertise and are available to assist committees and subcommittees in any way they can. This assistance takes many forms, including but not limited to:

- Providing the initial analysis of the executive budget and writing the documents that will be used by the subcommittees as tools in making recommendations;
- Serving as experts on budgeting and appropriations in general, and on the budgets and operations of particular state agencies under consideration;
- Advising subcommittees on procedure and providing suggested options;
- Providing any necessary research or clarification on matters of interest to subcommittees; and
- Writing all language enacted, as well as accomplishing the mechanical work necessary to write bills recommended by subcommittees.

Please do not hesitate to ask Legislative Fiscal Division staff members for other assistance as needed, either during subcommittee hearings or at any point thereafter. If you have questions, concerns, or interest in agencies outside of the subcommittee, the staff specializing in that area will be happy to assist you.

A listing of staff assignments by agency for the current legislative session follows.

LEGISLATIVE FISCAL DIVISION (LFD)
State Capitol, First Floor, East Wing, Room 110A
(406) 444-2986

STAFF ASSIGNMENTS

General Government

Greg Dewitt (Ext. 5392, Office #119)

Secretary of State
Revenue
Administration

Vacant (Ext. 5834, Office #110F)

Legislative Branch
Governor's Office
Commissioner of Political Practices
Consumer Counsel
Commerce
Military Affairs
Labor & Industry

Kris Wilkinson (Ext. 2722, Office #110G)

State Auditor's Office

Health & Human Services

Lois Steinbeck (Ext. 5391, Office #118)

Marilyn Daumiller (Ext. 5386, Office # 110M)

Kris Wilkinson (Ext 2722, Office 110G)

Natural Resources & Transportation

Barb Smith (Ext. 5347, Office #130)

Fish, Wildlife & Parks
Environmental Quality
Natural Resources & Conservation
Agriculture
Livestock

Greg Dewitt (Ext. 5392, Office #119)

Transportation

Judicial Branch, Law Enforcement and Justice

Pat Gervais (Ext. 1795, Office #117)

Judiciary
Board of Crime Control
Justice
Public Service Regulation
Corrections
Office of the Public Defender

Education

Barbara Smith (Ext. 5347, Office #130)

Office of Public Instruction
School for the Deaf and Blind
Board of Public Education

Pam Joehler (Ext. 5387, Room #110H)

Commissioner of Higher Education/
Board of Regents

Education (Continued)

Pam Joehler (Ext. 5387, Room #110H)

Community Colleges
Six University Units and College of Tech.
Agricultural Experiment Station
Extension Service
Forestry & Conservation Experiment Station
Bureau of Mines & Geology
Fire Services Training School
Montana Arts Council
Library Commission
Montana Historical Society

Jim Standaert (Ext. 5389, Office #113)

Office of Public Instruction

Long Range Planning

Cathy Duncan (Ext. 4580, Office #131)

Long-Range Building Program
State Building Energy Conservation
Long-Range Information Technology Program
Treasure State Endowment
Treasure State Endowment Regional Water System
Reclamation & Development Grant Program
Renewable Resource Grant & Loan Program
Cultural and Aesthetic Grant Program

Revenue Estimating/Monitoring/Tax Policy

Terry Johnson (Ext. 2952, Office #115)

Jim Standaert (Ext. 5389, Office #113)

Roger Lloyd (Ext. 5385, Office #120)

Cathy Duncan (Ext. 4580, Office #131)

Stephanie Morrison (Ext. 4496, Office 110M)

Data Maintenance

Brian Hannan (Ext. 1787, Office #1100)

Fiscal Specialist

Jon Moe (Ext. 4581, Office #132)

Support Staff

Diane McDuffie (Ext. 2986, Office #110E)

Susie Lindsay (Ext. 2986, Office #110D)

Principal Fiscal Analysts

Terry Johnson (Ext. 2952, Office #115) – Revenue

Taryn Purdy (Ext. 5383, Office #114) – Budget

Legislative Fiscal Analyst & Director

Amy Carlson, (Ext. 2988, Office #116)

Section 2

Appropriations Basics

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APPROPRIATIONS BASICS

This section provides a refresher in basic appropriations concepts. A more detailed discussion is included in the publication entitled “Understanding State Finances and the Budgeting Process”, available through the Legislative Fiscal Division.

APPROPRIATIONS PRECEPTS

There are three foundational precepts of appropriations in Montana, from which all budgeting work derives:

- 1) No state money can leave the treasury without an appropriation.
- 2) Appropriations can only be made by the legislature (there are minor exceptions)¹.
- 3) The constitution requires that the budget be balanced before the legislature can adjourn.

The executive must present a balanced budget for legislative consideration. However, the legislature is under no obligation to adopt any part of the proposed budget. Rather, it is ultimately the responsibility of the legislature to construct and adopt a balanced budget that reflects legislative priorities for what state government should be.

APPROPRIATIONS TYPES

The legislature sets a maximum amount when making an appropriation. There are three ways appropriations can be made:

- 1) **Temporary appropriations**, which are good for a maximum of two years. The General Appropriations Act (HB 2) is the largest temporary appropriations bill. Only the legislature can authorize temporary appropriations.
- 2) **Statutory appropriations**, which can only be changed through statute change. Only the legislature can authorize statutory appropriations.
- 3) **Budget amendments**, which add certain types of fund (never the general fund) during the interim. The Governor, the Board of Regents, the Supreme Court, and the standing statutory legislative committees can authorize expenditure from budget amendments.

¹ In addition, when establishing appropriations, the following are true:
Appropriations cannot be made to private individuals, associates, or corporations
The constitution prohibits debt to fund deficit spending
Debt can only be assumed through 2/3 vote of each chamber of the legislature

Historically, around 90 percent is appropriated in temporary appropriations bills. The primary temporary appropriations bill is HB 2. This bill is the appropriations source for almost all of temporary appropriations ²(generally between 90 and 98 percent).

FUND TYPES

Government accounting is defined by the source and use of the funds. There are four main fund types:

- 1) Governmental
- 2) Proprietary
- 3) Fiduciary
- 4) University

The legislature does not appropriate proprietary (with limited exceptions), fiduciary, or university funds.

Governmental Funds

When people think of “government”, they are generally referring to those functions funded with governmental funds. There are five types:

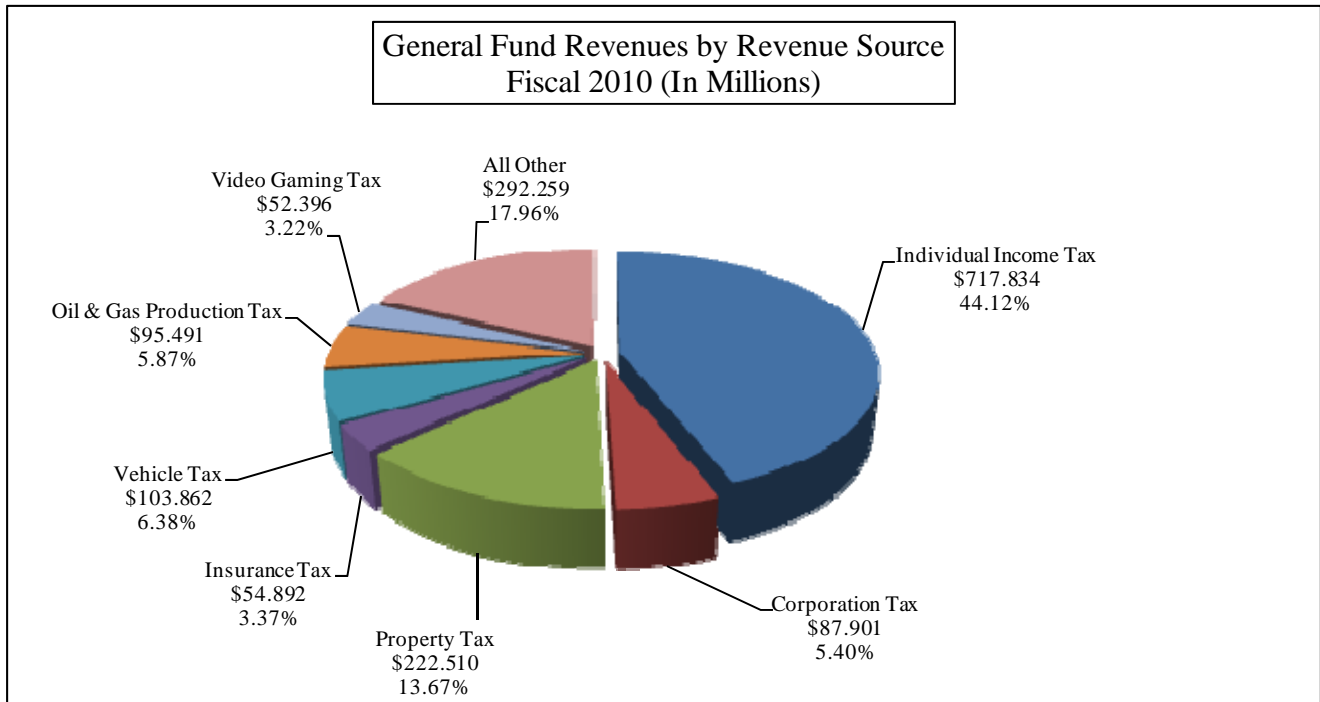
- 1) **General fund** is defined as all financial resources except those required to be accounted for in another fund. General fund is primarily general tax revenues (generally applied across a very wide spectrum of taxpayers) used for general purposes of state government. Because general fund can be used for any purpose within the law, the legislature is usually more concerned with the use and availability of general fund than with the other sources of revenue.
- 2) **Special revenue funds** are defined as specific revenue sources that are legally restricted to expenditure for specified purposes. There are two main types of special revenue funds:
 - a) State special revenue (money from state sources specifically earmarked for the purpose of defraying particular costs within an agency, program, or functions); and
 - b) Federal special revenue (revenue from federal sources, usually earmarked for particular purposes and often requiring either a match or maintenance of a prescribed level of state participation).
- c) **Capital projects funds** account for financial resources used for the acquisition or construction of major governmental general fixed assets. The primary capital projects account is the one used to account for revenues and expenditures for the state’s long-range building program.
- 3) **Debt service funds** account for the accumulation of resources for the payment of general long-term obligations, both principal and interest.
- 4) **Permanent funds** account for financial resources that are legally restricted to the extent that only earnings, but not principle, may be used. Permanent funds used to be called “nonexpendable trust funds”.

² Includes the pay plan bill in the calculation

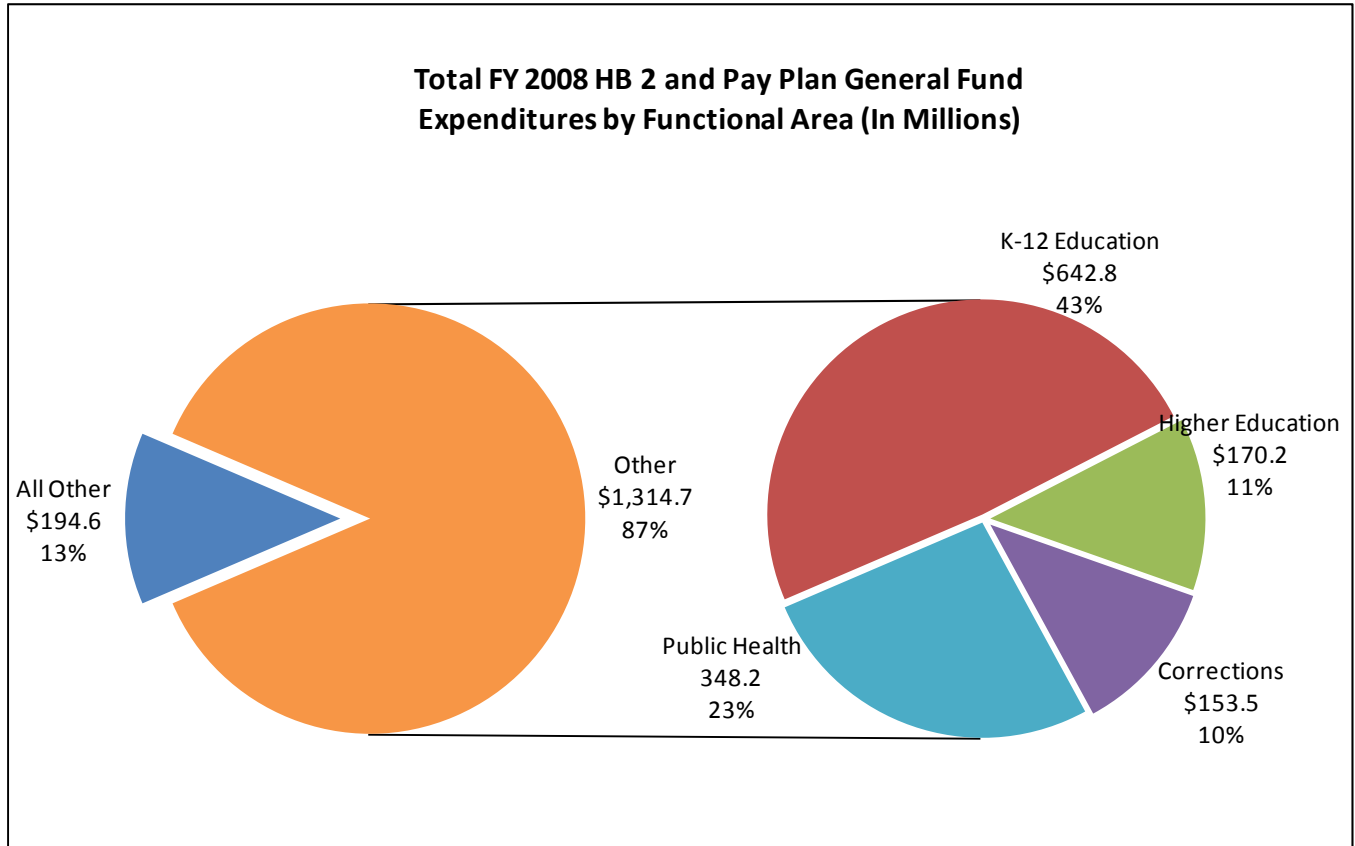
General Fund

Given the necessity that it be balanced; and its sources, virtually limitless uses, and importance as the measure of the state's financial health, general fund is the primary focus of legislative interest.

The following chart shows sources of general fund revenue in FY 2008. As shown, the largest source is individual income tax.



If only HB 2 (and the pay plan bill) is used, the share of the budget devoted to education, human services, and corrections is about 90 percent.



Section 3

Subcommittee Role and Structure

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SUBCOMMITTEE ROLE AND STRUCTURE

There are two overarching realities that set the stage for subcommittee work on HB 2.

- The general appropriations act (HB 2) is the vehicle through which the great majority of appropriations that fund state government agencies are made
- The House Appropriations and the Senate Finance committees are the two spending committees of the legislature, and therefore hold primary responsibility for review and recommendations relative to HB 2

SUBCOMMITTEE ROLE

Because of the size and complexity of HB 2, the normal committee bill review process (in which the committee examines the bill in total and makes recommendations to the full House or Senate) is insufficient. This process does not allow for the complexity of the bill, nor does the session allow the time necessary for thorough review by the entire committee. Last, the normal process does not recognize the need for expertise of committee and staff members relative to the various budget areas.

Consequently, HB 2 is divided into sections comprised of the budgets of like-function agencies. Each section is reviewed by a subcommittee. This allows for more thorough review, and acquisition of agency budget expertise by the subcommittee members.

The end product of subcommittee review is the first and most in-depth recommendation to the House Appropriations Committee about what should be contained in HB 2. The recommendation also provides for any other special budgetary considerations.

SUBCOMMITTEE STRUCTURE

- Subcommittees consist of members of House Appropriations and Senate Finance committees
- A member of the House is always chairman; a member of the Senate is always vice chairman
- There are usually six members, who are evenly divided between chambers. Unless special dispensation has been made, the party holding the majority in the respective chamber also holds a majority of that chamber's representation on the subcommittee

There are currently six subcommittees.

- a) General Government
- b) Human Services
- c) Natural Resources and Transportation
- d) Judicial Branch, Law Enforcement, and Justice
- e) Education
- f) Long-Range Planning

Each subcommittee is assigned a group of agencies for review. A detailed listing of subcommittee assignments for the current legislative session follows.

Agency Subcommittee Groupings

GENERAL GOVERNMENT AND (Section A)

Legislative Branch
Consumer Counsel
Governor's Office
Secretary of State
Commissioner of Political Practices
State Auditor
Revenue
Administration
Commerce
Labor & Industry
Military Affairs
Agriculture
Transportation

HEALTH AND HUMAN SERVICES (Section B)

Public Health and Human Services

NATURAL RESOURCES AND TRANSPORTATION (Section C)

Fish, Wildlife and Parks
Environmental Quality
Livestock
Natural Resources and Conservation
Agriculture
Transportation

JUDICIAL BRANCH, LAW ENFORCEMENT AND JUSTICE (Section D)

Judiciary
Crime Control Division
Justice
Public Service Regulation
Office of Public Defender
Corrections

EDUCATION (Section E)

Office of Public Instruction
Board of Public Education
School for the Deaf and Blind
Montana Arts Council
State Library Commission
Montana Historical Society
University Units and College of Technology
Community Colleges
Agricultural Experiment Station
Extension Service
Forestry and Conservation Experiment Station
Bureau of Mines & Geology
Fire Services Training School

LONG-RANGE PLANNING (Section F)

Long-Range Building Program
Treasure State Endowment Program
Treasure State Endowment Regional Water System
State Building Energy Conservation
Reclamation & Development Grant Program
Renewable Resource Grant & Land Program
Cultural and Aesthetic Grant Program
Long-Range Information Technology Program

Subcommittees follow the standard hearing and executive action structure. Individual subcommittees decide whether executive action will be taken on the same day a budget is heard.

SCHEDULES

Subcommittees must complete their work prior to the 45th legislative day. Given the overall legislative transmittal schedules – and depending upon other requirements of legislative leadership – subcommittees may be asked to complete work several days prior to the 45th day. It is the responsibility of the LFD staff, in consultation with the committee chair, to establish an initial schedule for the completion of subcommittee work.

This schedule is posted and is also available on the Internet. It is used to provide the official hearings notices required by law. A sample schedule from the 2005 legislative session follows.

A general schedule of the legislative session and the dates by which tasks must be completed is also included.

General Government Appropriations Schedule

Representative Bill McChesney, Chairman
 Representative Walter McNutt
 Representative Bill Nooney
 Representative Jon Sesso
Room: 317-B, State Capitol

Senator Rick Laible, Vice-chairman
 Senator Ken (Kim) Hansen
 Senator Ryan Zinke

Time: 8:30AM – 12:00 Noon (except as noted)

Secretary:

Mitzi Grover (7353)

LFD Staff:

Greg DeWitt (Ext. 5392) (Lead staff)
 Matt Stayner (Ext. 5834)
 Lois Steinbeck (Ext. 5391)

OBPP Representatives:

Mark Bruno (Ext. 4118)
 Shawn Graham (Ext. 0054)
 Amy Sassano (ext. 0619)

**** Agency Order – Executive Action Following Each Agency ****

- | | | |
|---------------------------------|--|----------------------------|
| 1. Department of Administration | 5. Department of Labor and Industry | 9. Governor’s Office |
| 2. Montana Consensus Council | 6. Commissioner of Political Practices | 10. Legislative Branch |
| 3. Secretary of State | 7. State Auditor | 11. Consumer Counsel |
| 4. Department of Revenue | 8. Department of Military Affairs | 12. Department of Commerce |

Day	Weekday	Date	Tentative Schedule	Topic / Agency	LFD Analyst	
1	Mon	01/05	First legislative day – no subcommittee hearings			
2	Tues	01/06	No subcommittee hearings			
3	Wed	01/07	Legislator training			
4	Thur	01/08	Legislator training			DeWitt
5	Fri	01/09	Consensus Council hearing and executive action, Secretary of State hearing and executive action, Department of Administration (except Health Care & Benefits Division) – hearing			DeWitt
6	Mon	01/12	Legislator training 10:15 Department of Administration – hearing			DeWitt
7	Tues	01/13	Department of Administration (except Health Care & Benefits Division) – hearing			DeWitt
8	Wed	01/14	Department of Administration (except Health Care & Benefits Division) - executive action			DeWitt
9	Thur	01/15	State Auditor - hearing			Stayner
10	Fri	01/16	State Auditor - executive action			Stayner
12	Mon	01/19	Department of Administration deferred items – executive action; Legislative Branch - hearing			DeWitt Stayner
13	Tues	01/20	Legislative Branch - executive action			Stayner
14	Wed	01/21	Department of Commerce - hearing			Stayner
15	Thur	01/22	Department of Commerce - hearing			Stayner
16	Fri	01/23	Department of Commerce - executive action			Stayner
18	Mon	01/26	NOTE LATE START TIME 8:30 A.M. Department of Labor and Industry - hearing			Stayner
19	Tues	01/27	Department of Labor and Industry - hearing			Stayner
20	Wed	01/28	Department of Labor and Industry - executive action			Stayner
21	Thur	01/29	Governor’s Office - hearing			Stayner
22	Fri	01/30	Governor’s Office - executive action			Stayner
24	Mon	02/02	Department of Revenue – hearing			DeWitt
25	Tues	02/03	Department of Revenue – hearing			DeWitt
26	Wed	02/04	Department of Revenue - executive action			DeWitt
27	Thur	02/05	DofA Health Care & Benefits Division – hearing, Commissioner of Political Practices - hearing			Steinbeck Stayner
28	Fri	02/06	DofA Health Care & Benefits Division - executive action, Commissioner of Political Practices - executive action			Steinbeck Stayner
30	Mon	02/09	Department of Military Affairs – hearing and executive action			Stayner
31	Tues	02/10	No Schedule at this time			
32	Wed	02/11	Consumer Counsel – hearing and executive action			Stayner
33	Thur	02/12	No Schedule at this time			
34	Fri	02/13	No Schedule at this time			
36	Mon	02/16	No Schedule at this time			
37	Tues	02/17	Subcommittee wrap-up			DeWitt
38	Wed	02/18	Wrap-up			DeWitt
39	Thur	02/19	No Schedule at this time			
40	Fri	02/20	Wrap-up ***** Last Day for Subcommittee Work on HB 2*****			DeWitt Stayner

Example of Traditional Appropriations Schedule

Legislative Days

- 1-6 Feed Bill - Prepared by the Legislative Services Division. There will be hearings in both the House Appropriations and Senate Finance committees.
- 2-43 Subcommittee Hearings on HB 2 - Subcommittees meet three to four hours, five days a week.
- 50-55 Subcommittees Report HAC Action on HB 2 - On successive days, the five subcommittees present their reports to the House Appropriations Committee (HAC).
- 56-61 Preparation of Bill and Narrative - The LFD staff takes the action of the full appropriations Committee and incorporates it into the original draft. The HAC version of the bill is a clean second reading copy that is completely substituted for the bill entered originally.
- The LFD staff also updates the subcommittee narrative so that it is consistent with the full committee actions. The updated narrative, along with the bill, is distributed a day or two prior to the scheduled debate in the full House.
- Long-Range Planning Subcommittee* - HAC completed action and reports all long-range planning bills to the floor.
- 64-65 *Appropriations Bill Second Reading* -- The bill is debated in sections. Legislative Fiscal Division staff update the narrative following House action.
- 65 *House Third Reading of Appropriations Bill.*
- 66-76 *Senate Finance HB 2* – On successive days, the committee takes action on HB 2, by section. Staff updates the narrative to reflect committee action.
- 79 *Senate Floor Debate on Appropriations Bill.*
- 80 *Senate Third Reading on Appropriations Bill.*
- 80 Senate returns appropriations bill to the House.
- 81-89 Free conference committee on long-range planning and major appropriations bills.

Section 4

Show Me The Money

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SHOW ME THE MONEY

This section addresses appropriation of funds and is designed for general use by all subcommittees. Its purpose is to provide a primer showing how budgets are constructed, and discussing the range of legislative responsibilities and its options for action. Please note that each subcommittee will encounter different challenges and will need various kinds of specialized information. This section is designed for general use by all subcommittees.

The section is divided into two main parts.

Prefacing Information: The four subjects that should be understood and/or kept in mind when examining the rest of the section.

- Structure of Budgeting and the Budgeting System
- Dealing with Revenue and Revenue Estimates
- Levels of Expenditure
- Global Decisions and Their Application to Subcommittee Work

Building and Acting on the Budget: The components of the budget and how budgets are constructed. There is also a discussion of legislative responsibility and the range of potential legislative actions available. This section consists of four parts:

- Personal Services
- Other Expenditure Items (e.g., operating expenses, equipment, grants, and benefits and claims)
- Internal Service Functions
- Statewide Present Law Adjustments

PREFACING INFORMATION

There are a number of subjects that the legislature needs to become familiar with in order to budget effectively.

This section provides information on some of them, including:

- How budgets are put together and the elements they must contain. This information is included in the section entitled, "Structure of Budgeting and the Budgeting System".
- What the appropriations committees need to know about revenues and the revenue estimating process, and how revenues impact appropriations work. The section also discusses the revenue estimating component of writing HB 2 when programs funded with state special revenue accounts are involved.
- How expenditures are grouped and recorded, and their bearing on appropriations determination.
- A discussion of the decisions made in joint House Appropriations and Senate Finance committee action that affect all agencies, with information about how these decisions impact subcommittee action.

STRUCTURE OF BUDGETING AND THE BUDGET SYSTEM

This section includes the actual form of the budget submission and the mechanism by which changes are made; and the subcommittee's rights and responsibilities within the budgeting structure.

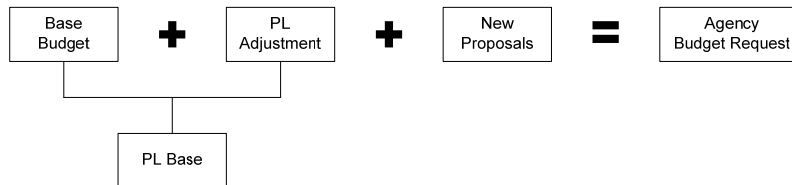
Budget Form

In the December 1993 Special Session, the legislature changed the requirements for the budget. In examining budgets, the legislature wanted to see:

- Actual program expenditures
- Any changes requested in order to continue operations, but at a level adjusted for inflation or workload increases
- Any changes resulting from new initiatives or programs, including changes in funding.

Consequently, legislation was passed that required the budget to be presented in three tiers:

- 1) The base
- 2) Present law
- 3) New Proposals



Base

The legislature generally uses actual adjusted expenditures from the last fully completed year as a starting point for the next biennium's budget. Total expenditures are adjusted to remove certain items that are not deemed appropriate for consideration as expenditures for on-going functions. Hence, the base used for budgeting differs from total actual expenditures.

The base is established through the following process.

First, all actual expenditures in the base, or last completed fiscal year, are captured.

Second, because the base is the starting point, and adjustments are generally made from there, the base reflects only those expenditures that:

- Fund on-going operations
- Reflect funding approved through HB 2 or another appropriations bill
- The legislature has previously acted upon

The following expenditures are eliminated from the base and do not automatically appear:

- Budget amendments, that have not been approved by the legislature
- Statutory appropriations, which do not require continuance in HB 2
- Expenditures related to functions or projects that are not anticipated to continue in the next biennium or that the legislature specifically discontinued
- Other administrative adjustments conducted during the year

In the case of budget amendments, if agency personnel feel that expenditures will continue they must specifically ask for reauthorization through a decision package.

If a change from the base (a decrease or an increase) is requested or approved by the legislature, it will be presented in one of two forms, depending upon its purpose:

- As a present law adjustment; or
- As a new proposal.

Present Law

Present law base is defined in statute as 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:

- Changes resulting from legally mandated workload, caseload, or enrollment increases or decreases
- Changes in funding requirements resulting from constitutional or statutory schedules or formulas
- Inflationary or deflationary adjustments
- Elimination of nonrecurring appropriations

Present law adjustments can oftentimes be the heart not only of changes in the budget but of policy issues. The primary examples are the Departments of Public Health and Human Services and Corrections, where changes in caseload are considered present law.

New Proposals

New proposals are defined in statute as “requests to provide new non-mandated 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.”

Budget Changes

Changes to the budget are proposed and/or made through a mechanism called decision packages.

- Decision packages can be either present law adjustments or new proposals
- All changes proposed by the Governor use this vehicle. While a subcommittee can make any changes to the budget deemed necessary and appropriate, one of its primary tasks is to examine the decision packages proposed by the Governor.
- Any other action taken by the legislature will be reflected in a decision package created by LFD staff

Subcommittees have four primary rights and responsibilities within this structure. They :

- 1) Approve and fund the base.
- 2) Determine whether to approve any of the Governor’s present law adjustments or new proposals and set the level or source of funding.
- 3) Make any other changes to the budget desired by the subcommittee.
- 4) Specify conditions or expectations relative to the use of the appropriations.

Dealing with Revenue and Revenue Estimates

While legislative expenditure committees (i.e., House Appropriations, Senate Finance and related subcommittees) do not deal directly with revenue estimates or tax bills, the amount of general fund revenue available has a direct bearing on their work.

- The Montana Constitution requires that the budget be balanced before the legislature can adjourn. Therefore, clearly, legislative expenditure committees of the legislature must be very aware of the amount of general fund available.
- The availability of general fund can influence each subcommittee’s options. Subcommittees may be asked to work toward general fund targets within their sections or specific agencies, depending upon the anticipated financial position of the general fund financial position.

Non-General Fund

Subcommittees must, in the course of their deliberations, appropriate funds from various state special revenue accounts. The following factors must be considered by the legislature.

- Total funds available for appropriation
- The general status and impact of various appropriation levels on the accounts.

The LFD Budget Analysis includes any issues with state special revenue fund balances. LFD staff can also provide any additional information on the status of the accounts.

Levels of Expenditures

Expenditures of state government are coded in a number of categories based upon object. Expenditures are classified at three levels: 1) category; 2) object; and 3) detail. As the names imply, the three levels become progressively more detailed.

Following is an illustration of this principle. Each of the numbered items represent the 1st, or “category” level of expenditure, with samples of 2nd and 3rd level expenditure detail following.

- 1 - Personal services
 - Salaries
 - Regular
 - Overtime
 - Sick Leave
 - Other Compensation
 - Per Diem
 - Education Stipend
 - Benefits
 - FICA
 - Group Insurance
- 2 - Operating expenses
 - Contracted Services
 - Consultant and Professional Fees
 - Legal Fees and Court Costs
 - Computer Processing (DofA or Non-DofA)
 - Supplies and Materials
 - Food
 - Medical
 - Minor Tools
 - Communications
 - Travel
 - Rent
 - Utilities
 - Repair and Maintenance
 - Other Expenses
 - Goods Purchased for Resale
- 3 - Equipment and Intangible Assets
- 4 - Capital Outlay
- 5 - Local Assistance (primarily BASE aid to schools from OPI)
 - From state sources
 - To Counties
 - To Cities
- 6 - Grants
- 7 - Benefits and Claims
- 8 – Transfers

Global Decisions and Their Application to Subcommittee Work

Each session certain, policies are adopted on global budget items, or those items that, because they are common to all agencies, require some consistency of action. Subcommittees are expected to follow these policies as they do their work.

Recommendations can cover any number of budgetary issues, but have specifically addressed the following in past sessions. These issues are listed and explained for purposes of reference. Other sections of this document include an expanded explanation of most of the issues.

Starting point for legislative action. Do subcommittees start from the base, which requires specific action to add any present law adjustments, or do they begin with the executive budget present law, in which instance specific action would be needed to remove any present law items included in the executive budget.

Non-discretionary increases. Agencies must bear certain costs resulting from policy decisions made by the previous legislature. Consistency of application and funding of these non-discretionary increases are necessary. The primary example is the current biennium pay plan. For the last several years the legislature has delayed implementation of the pay plan and has increased the pay plan during the second year of the biennium. Obviously, delayed implementation and second year increases mean that the full costs of the pay plan are not reflected in the base year expenditures. Non-discretionary costs are discussed in more detail in the “Statewide Present Law Adjustments” section under “Personal Services.”

Budget decisions made centrally with costs allocated to agencies (fixed costs). How much an individual agency pays for certain items is determined based upon the budgets established for the programs providing those services. For example, the rates charged to agencies for information services provided by the Information Services Division are established in the subcommittee that hears the Information Services Division budget, and are then uniformly applied to all agencies (which they must be budgeted to pay). Therefore, the joint committees have recommended that, in the instance of those fixed costs, they be funded at the level that reflects the rates established. This action ensures that an individual agency will not be faced with having to pay those fixed costs but not receiving the appropriation to do so from their subcommittee. Fixed costs are discussed in more detail in the “Statewide Present Law Adjustments” section.

Inflation. Inflation is usually added to various items in the executive budget. The joint committees generally direct the subcommittees to apply all inflation adjustments consistently to all agencies. Inflation is discussed in more detail in the “Statewide Present Law Adjustments” section.

Vacancy savings. The joint committees have directed the subcommittees to apply vacancy savings consistently. For example, one agency would not be allocated an overall rate of 10 percent while another was allocated 2 percent. This recommendation in no way impedes the subcommittees’ ability to make other adjustments to personal services, including elimination of funding for FTE. Vacancy savings is discussed in more detail in the “Statewide Present Law Adjustments” section.

Making changes to FTE costs. Since the MBARS system automatically assigns costs to individual FTE based upon the attributes of a position, there can be a disconnect between removal or addition of the FTE and the associated costs. The joint committees have recommended that subcommittees specify the number of FTE and the attributes associated with positions (e.g., grade 13), rather than a dollar amount they wish to increase or decrease personal services. The system can then calculate the actual costs associated with the change.

Funding for potential bills or other contingencies. Occasionally, budgets are requested that include funding in anticipation of the passage of other legislation. In the past, the joint committees have generally recommended refraining from adding these funds until the bill passes. If subcommittees wish to provide contingency appropriations, they have two general options: 1) add the appropriation with the stipulation that the funds be removed if the contingency (i.e. passage of the legislation) doesn't occur; or 2) write the budget so that the funds are not added until the event occurs. The joint committees have consistently recommended the latter.

Building and Acting on The Budget

This section contains a primer on the various components of the budget, and discusses how they are put together, along with the range of options available to the legislature when writing HB 2. Discussion on the following subjects is included:

- How personal services budgets are built, and the range of legislative action possible in funding personal services
- How other expenditure items are built into the budget, and the range of legislative action when funding those items
- How functions funded through charges to other agencies or other functions within an agency are reviewed, and the legislative responsibility for determining the rates charged
- Those budget items that must be decided centrally, rather than within each subcommittee, and the responsibilities and range of action possible for each

Constructing Personal Services

Personal services are constructed by looking at individual positions and associated attributes. Those attributes include:

- The FTE level (whether the position is full-time or some fraction of full-time);
- The position grade; and
- Where the position falls on the market scale (entry, midpoint, market).

(MBARS contains, for each authorized position, the individual attributes and benefit calculations used to construct the budget.)

What Positions Are Used?

Positions are not authorized or approved by the legislature. While the legislature does not “approve” any particular FTE, it makes assumptions about the number and particulars of associated FTE when establishing the personal services budget. The unique characteristics of those FTE may have changed from the previous session, the starting point in the next budget cycle will be 20 FTE. (Legislative action FTE is discussed in more detail in the following section, “Legislative Action on Personal Services.”)

How Are Benefit Levels Determined?

Benefits are determined by applying unique benefit attributes to each position. For example, the state must pay Workers’ Compensation, a portion of retirement costs, FICA, workers compensation, Medicare, unemployment insurance taxes, and health insurance for all employees. With the exception of health insurance, which is a set amount applicable to all full-time employees, the level of these payments is unique for each individual and based upon certain factors unique (and universal) to the type of benefit. Therefore, if the FICA or Workers’ Compensation tax rate is expected to change during the coming biennium, that change must be reflected in the budget. Health insurance is budgeted at the level authorized by the last legislature.

The Mechanics of Budget Building

Toward the end of the base year, a “snapshot” is taken of all positions within each program in each agency as funded in HB 2. The attributes of positions are captured, including grade and salary levels of those currently occupying each position (if the position is vacant, the entry level salary is used). The assumption is made that the person currently occupying the position will fill the position for the entire year, the current salary is captured for budgetary purposes.

Benefits expected to be in effect during the coming biennium are added to this salary. In the executive budget, a vacancy savings rate may be assumed and built into the totals.

Other personal services costs, such as overtime, holidays worked, and differential (for positions that must work 7 days a week, 24 hours per day), as well as per diem for board members, are not customarily built into the budget and must be added through decision packages.

Why Can There Be Large Differences?

There are a number of reasons why actual expenditures may vary significantly from the requested budgetary levels.

- Vacancy savings. Positions are budgeted as if the position will be filled for the entire year, and at the salary level of the person occupying the position when the “snapshot” is taken. However, vacancies can occur during the year. Additionally, new people coming into positions often have less experience and therefore receive lower salaries than their predecessors.
- Adjustments in benefit rates.
- Upgrades or downgrades. The grade at which a position is classified is dependent upon a number of factors, including duties, skills and experience required. When a change is made to those duties or requirements, or as a result of a review, the grade of a position may be changed. This change results in different salary requirements.
(Note: The legislature cannot unilaterally upgrade or downgrade a position. This process, designed to protect the employee as well as the state, is conducted by the individual agencies, then reviewed and coordinated through the Personnel Bureau of the Department of Administration.)
- Pay plan annualization. For the past several biennia, the legislature has provided an annual pay-plan increase for state employees that, was implemented part-way through the year. For this reason, base expenditures only include a portion of the actual cost of the pay plan for the upcoming biennium.
- Termination pay-outs in the base year that are not added into the next biennium.
- Unusual overtime or other special expenditures.

The legislature has also consistently assumed that some positions will be vacant during the year, and/or that positions will be filled at lower salary levels than those achieved by the departing employee. Consequently, the fully-funded cost of personal services has been reduced by a special vacancy savings rate.

Personal Services in the Budget

Personal services costs fall into three tiers.

- Actual expenditures
- Adjusted personal services, or the amount necessary to fully fund all authorized positions. This figure includes any adjusted benefit rates, as well as the cost to fund the positions for the full year under the current biennium pay plan.
- Requested personal services – that are ultimately approved include all present law adjustments and new proposals added through decision packages.

Legislative Action on Personal Services

The legislature can make any number of changes to personal services from the amount included in the executive budget amount. It can

- Eliminate funding for FTE
- Change personal service rates including per diem, overtime, or differential
- Enact vacancy savings
- Restrict funding for personal services

(Note: Specific language and/or line-item appropriations are required to enact some of the above.)

The legislature cannot:

- Change benefit levels. Changes in benefits can be made only if underlying statutes determining the benefit levels are changed
- Provide upgrades or downgrades to individuals or positions
- Prohibit the hiring of individual types of positions or require that particular positions be eliminated
- Require the removal of individuals
- Appropriate FTE

Even though the legislature examines and uses FTE information, it does not approve levels of FTE, no does it add or eliminate FTE, per se. Rather, the legislature adds or eliminates *the funding associated with particular FTE*. While the distinction can be difficult to grasp, the bottom line is that FTE levels are essentially in the purview of the entity with authority over the agency (in most cases the Governor), while funding is a legislative prerogative. Obviously, FTE cannot be hired unless there is funding with which to hire. However, ultimately the executive and Judicial branches have final authority over the number and composition of FTE hired. Temporary FTE can be hired in the interim without legislative approval, but if FTE are added in this manner, and if the agency wishes to maintain those positions, they must be requested in a new proposal.

Constructing the Remainder of the Budget

The remainder of the budget for most agencies (including such items as operating expenses, equipment, grants, benefits and claims) is generally constructed using an incremental approach. Anticipated or desired changes to the level of expenditure in the base year are requested and must be justified. Individual changes to expenditure items are grouped in decision packages based on the purpose or cause of the change. A decision package might reflect a specific change or an adjustment to the overall program costs.

A specific change. If the agency anticipates an increase in the number of people requesting materials, they would specifically request an increase for postage and the other resources needed to address this increase in workload.

Adjustment to program costs. The amount requested in the decision package simply reflects the difference between the total anticipated costs and the expenditures made during the base year. For example, estimates of Medicaid expenditures are based upon projected numbers of recipients and the mix of services they require.

Zero-Base Items

Most expenditures are constructed by taking an incremental approach. Even so, all requests included in certain categories, regardless of how much may have been expended during the base year, must be justified in the budget. Such expenditures include contract services and equipment. (Note Although the entire expenditure amount is justified, decision packages include only the difference between base year expenditures and the requested amount.)

Legislative Action

Within the direction provided by the joint House Appropriations and Senate Finance Committees and the confines of statute – go for it.

Internal Services Functions

Certain functions performed by programs of state government are funded by the entities receiving the services. The revenue is deposited in a proprietary account, and the program providing the service is funded from that proprietary account.

- Because the functions are funded with proprietary funds, an appropriation is not required, and the funds are not included in HB 2
- The legislature approves all rates charged (Note: rates cannot be raised during the interim)
- Rates charged to entities receiving and paying for services are included in a special section of HB 2 (All funds to pay for the service provided are included in the receiving agency's HB 2 budget.)

Internal services rates are established.

- To fund programs that require centralized planning and application, control, and/or specialization. For example, the Department of Administration provides centralized computer services and planning, and is compensated by all agencies.
- To ensure that all funding sources pay for centralized services, either on a statewide basis or within agencies.

The federal government does not directly provide funding for central operations within an agency including payroll processing, general agency administration, rent and utilities or; for centralized statewide processes including warrant writing, grounds maintenance, or capitol complex rent. However, these functions support federally-funded programs. To avoid leaving the state with totally responsibility for absorbing these costs arrangements have been made with federal agencies through which they pay a portion of these costs through application of a charge, or "indirect cost" to the federally-funded programs. This charge is then applied to all other funding sources to fund the central function.

Legislative Responsibility

Because the legislature is responsible for establishing the rates charged, it must ask:

- What the program does and what is it proposing to do in the next biennium?
- What are the rates that will be charged? Who will pay them?
- What is the status of the fund that will receive and expend the revenue? Is the fund balance appropriate and adequate? What are the long-term prospects for the health of the account?

Subcommittee Action

There are three circumstances that lead to three types of subcommittee action:

- A program or function that provides internal services functions to all or most other state agencies charge a fixed rate. For functions providing statewide services, charges made to receiving agencies are called “fixed costs”. The General Government and Transportation Subcommittee establishes the rates for most programs providing this type of services. Because that subcommittee determines the rates, individual subcommittees hearing the budgets of agencies paying the charge have limited options. (For a more detailed discussion and a listing of the programs funded in this way, please see the “Fixed Cost” portion of the “Statewide Present Law Adjustments” section.)
- An agency performing functions utilized by other agencies may charge on an “as-used” basis. Examples include records management services offered by the Secretary of State, and Agency Legal Services performed by the Department of Justice. Respective subcommittees establish rates, while subcommittees hearing the budgets of agencies using the services determine the appropriate level of funding and anticipated usage of the service.
- Internal services functions may be performed within an agency. Most agencies have unique internal services accounts. It is the responsibility of subcommittees to establish rates and add funds within given programs to allow for payment of those charges. For example, an agency’s centralized services function may perform accounting and personnel management for the entire agency, and may be funded through an indirect charge to the other programs.

(Note: The LFD Budget Analysis includes a discussion of each of the internal services accounts for which rates must be approved.)

Statewide Present Law Adjustments

Statewide present law adjustments are applied globally to all state agencies. The factors generally affect all agencies and are beyond the control of individual agencies. Because there is global application and necessity for consistency of application among agencies, these adjustments are segregated from other present law adjustments. Statewide present law adjustments have unique requirements that must be addressed by subcommittees and the legislature.

There are four statewide present law adjustments

- 1) Personal services
- 2) Inflation
- 3) Fixed costs
- 4) Vacancy savings

Each adjustment is discussed separately in the sections following.

Statewide present law adjustments are presented in the top half of the Present Law Adjustments Table in the LFD Budget Analysis.

Personal Services

A number of personal-service adjustments are made outside of the parameters of decision packages.

Non-discretionary increases to fully fund the pay plan authorized by the previous legislature. The 2001 legislature funded a pay plan that provided a four percent salary increase and an insurance adjustment to take effect partway through FY 2002. A further increase was provided for FY 2003³. Therefore, the base includes only a portion of the anticipated 2005 biennium personal services costs. These additional salary costs are in statute and must be paid.

Fully funding positions. The initial budget assumes that all positions will be funded for the entire year. Base year expenditures include vacancy savings.

Other adjustments are made to personal services to arrive at the “Statewide Present Law Adjustment” amount. These include the removal of one-time costs such as payouts and certain personal services adjustments such as overtime and differential pay. These items must be included in decision packages. For a further explanation, see the section on “Constructing Personal Services.”

The LFD Budget Analysis includes a discussion of any issues with the statewide adjustments identified by the LFD Analyst. Subcommittee LFD staff can also answer any additional questions.

Subcommittee Action on Statewide Personal Services Adjustments

- The legislature has a wide range of options available to them relative to personal services. However, the starting point must first be established.
- All agencies should begin with the same starting point. Otherwise, some could experience what amounts to unspecified reductions that are not experienced by other agencies.
- Subcommittees should accept the initial statewide adjustments, then make personal services adjustments as desired. (For an explanation of the range of action on personal services available to the legislature, see the section entitled “Legislative Action on Personal Services.”)

Potential Motion

“I move to accept the statewide present law personal services adjustments.”

Inflation

Inflation is a general increase (or decrease) applied to certain expenditures in order to account for anticipated changes in the cost of the expenditure item.

- The executive budget includes certain inflation rates that are applied globally to all.
- Globally applied inflation is included in the “Statewide Present Law Adjustments” portion of the present law summary tables included in the LFD Budget Analysis for each agency.
- If an agency has a special case for which application of an inflation rate is desired, it must be requested in a separate decision package.

³ Funding to implement the plan was reduced by the legislature in special session in August, 2002. However, the components of the plan were not changed.

Subcommittee Action on Inflation Rates

Subcommittees must take positive action to add funding to compensate for inflation. Subcommittees should bear in mind:

- That a global decision on inflation is made by the joint House Appropriations and Senate Finance Committees
- All agencies should receive the same inflation adjustments if the inflation rate is global. If inflation is not added globally, some agencies are given what amounts to a budget cut that is not experienced by other agencies
- Any changes to the inflation rate applied for certain expenditures is done electronically as a result of the global action taken

Suggested Motion

If the joint House Appropriations and Senate Finance Committees have instructed subcommittees to apply global inflation rates:

“I move to apply the inflation rates globally established by the legislature.”

Vacancy Savings

Vacancy savings are defined as the difference between the cost of fully funding a position for the year and actual expenditures.

- Differences between full funding and actual expenditures can be the result of a number of factors including position turnover, as stated in the “Constructing Personal Services” section.
- The legislature generally assumes agencies will experience some vacancy savings and builds it into the budgets.⁴
- The executive budget usually includes a proposed vacancy savings rate. This rate is included in the “Statewide Present Law Adjustments” portion of the Present Law Table included in the LFD Budget Analysis.

Vacancy savings are expressed as a percentage of certain personal services. For example, given the assumption that positions will, on average, be vacant for 4 percent of the year, a 4 percent reduction would be applied to the fully- funded cost.

⁴ In the 2003 biennium, the legislature applied a 4 percent vacancy savings rate to all personal services costs. This rate was then applied to most positions in state government. The following exceptions were made:

- Agencies with fewer than 20 FTE
- University system faculty
- Elected officials

The legislature fully-funded personal services to assume full complement for the entire year, and then reduced that appropriation by the vacancy savings rate.

In 2005 biennium, the executive budget recommends that the same vacancy savings rate be applied to the same position.

Subcommittee Action on Vacancy Savings

Subcommittees must take a positive action to apply a vacancy savings rate. However, subcommittees should consider the following when making this decision.

- The joint House Appropriations and Senate Finance Committees make a recommendation to all subcommittees concerning the application of vacancy savings
- All agencies should receive the same application of vacancy savings to avoid inconsistencies of application of a global issue
- Subcommittees should apply the global vacancy savings rate recommended. Subcommittees can make recommendations for a different application of vacancy savings in order to meet the unique requirements of specific agencies, including those for providing services 24 hours a day, 7 days a week.

Potential Motion

“I move to apply vacancy savings at the rate established by the legislature.”

Fixed Costs

Agencies are charged fees (called fixed costs) for a variety of services provided by other state agencies. The fixed costs charged to each agency are included in the “Statewide Present Law Adjustments” portion of the Present Law Adjustment Table.

Subcommittee Action on Fixed Costs

Subcommittees must take positive action to add the funds necessary to meet fixed costs. Even so, there are a number of points subcommittees should keep in mind when examining and acting on fixed costs charged to agencies.

- Fixed costs are determined by the rates that must be paid to the agency providing the service.
- If a fixed cost changes, it is due to a change in the rates charged.
- Rates are determined by the agency providing the service, not by the agency receiving service. The subcommittee responsible for providing agency approves the rates.
- Subcommittees acting on the budgets of receiving agencies should not change fixed cost amounts unless directed to do so because the subcommittee making recommendations on the rates charged has taken action.

Subcommittees can, however, change how fixed costs are funded from the mix recommended in the executive budget. The LFD budget analysis will raise the issue about the way fixed costs are funded if necessary.

Types of Fixed Costs

The following describes all of the fixed costs included in agency budgets. Grounds Maintenance is heard in the Natural Resources and Commerce Subcommittee. All others are heard in the General Government and Transportation Subcommittee.

Insurance and Bonds - The Risk Management and Tort Defense (RMTD) Division of the Department of Administration (DofA) collects premiums from state agencies for:

- The administration of the self-insurance program, which provides state agencies with general liability and automobile coverage; and

- The purchase of commercial policies for state agency property, aircraft, and to cover other risks. Costs are allocated to agencies based on the actual historical loss experienced, as well as inherent exposure to risk.

Payroll Service Fees - The State Payroll Program in DofA prepares and distributes payroll for all state agencies. Costs associated with these services are allocated to agencies based upon the number of paychecks issued for the agency each year.

SABHRS Operations Unit - This unit provides all operational support for the new Statewide Accounting, Budgeting, and Human Resources Systems (SABHRS). The costs allocation process is based on the number of full-time equivalent employees.

Data Network Services - The Information Technology Services Division (ITSD) of DofA is changing to an activity based budgeting system that charges agencies for the information technology services in a way that more closely relates to the actual services used by each individual user. The 2011 biennium is a transition period in which this fixed cost category will begin to allocate the costs to agencies with a methodology that more broadly incorporates data, voice, video and computer applications and processing services in the calculation of costs.

Messenger Service - The Mail and Distribution Program in DofA charges state agencies for inter-agency mail pick-up and delivery services. Costs are allocated to agencies based upon the volume of mail generated by, and number of daily deliveries to, each agency.

Rent - The General Services Division (GSD) of DofA charges rent to state agencies for the costs involved in maintaining office and warehouse space in the capitol complex buildings managed by GSD. Costs include utilities, security, janitorial services, mechanical maintenance, and minor maintenance goods and services including painting, lighting and carpeting. Warehouse costs are allocated to agencies based upon the amount of square footage of office warehouse space occupied at a fixed rate per square foot.

Warrant Writing Fees - DofA provides warrant writing and direct deposit services for agency financial transactions. Costs are allocated to agencies based upon FY 1994 utilization of the various types of financial transactions.

Audit Fees - The Legislative Audit Division charges agencies for the costs associated with financial compliance audits. These charges are included in agency budgets as biennial appropriations and allocated according to the estimated number of billable hours for each agency audit.

Grounds Maintenance - The Department of Administration charges state agencies for capitol complex grounds maintenance and snow removal. Costs are allocated based upon the square footage of office space occupied.

Statewide/State Fund Cost Allocation Plan (SWCAP/SFCAP) - There are two state cost allocation plan components that are directly billed to agencies. Cost allocations are made to collect funds for the support of those state government operating costs that cannot be easily identified with particular funding sources. Collections are deposited to the general fund to offset a portion of those costs, which would otherwise be supported entirely with general fund. The two components are: 1) SFCAP (the state fund costs allocation plan), and 2) SWCAP (the statewide cost allocation plan). SFCAP is a direct charge to offset costs. SWCAP is based upon a rate negotiated by DofA each year with the state's federal cognizant agency (Health and Human Services). Among the programs for which operating costs are partially recovered through cost allocation plan collections are: 1) Procurement and Printing,

State Personnel Division, and Accounting/Management Support in DofA; 2) a use charge on construction and renovation of certain state buildings; and 3) budget management services in the Office of Budget and Program Planning in the Governor's Office. Costs are allocated to agencies based upon the following: a) Procurement and Printing – depending upon the service, either requisitions processed, total operating costs, or equal allocations; b) State Personnel - the number of FTE authorized and classified, and the number of union covered employees; c) Accounting and Management Support - the number of accounting and cash transactions; and d) OBPP - the number of budget change documents, budget journal entries, executive planning process requests, and funding sources. Construction and renovation of certain state buildings is based on a user charge of 2 percent of the cost.

State Motor Pool Lease Vehicles - The state motor pool provides vehicles to agencies of state government on a lease basis. Unlike the daily rental, the vehicles are located at the agency location on a permanent basis. Agencies possessing the vehicles are assessed both a daily charge and a per mile charge for vehicle usage.

Section 5

HB 2 GENERAL APPROPRIATIONS ACT

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HB 2

This section of the manual will discuss the General Appropriations Act: HB 2. The section is divided into two sections:

- 1) **What Does the General Appropriations Act (HB 2) Do?** A discussion of HB 2, its legal authority, possibilities and limitations, and its form and content.
- 2) **HB 2 Appropriations Tools:** This section discusses the appropriations tools available to the legislature through which they can provide flexibility and control, as well as suggestions about how to use them effectively.

WHAT DOES THE GENERAL APPROPRIATIONS ACT (HB 2) DO?

- HB 2 gives state agencies the authorization to spend the great majority of the money they need to operate⁵
- HB 2 combines the actual numerical appropriations to agencies and programs, and supplies the language and conditions that provide direction and delineate requirements or restrictions
- HB 2 is a temporary spending bill, meaning that while funded operations may be ongoing, the funding itself is only good for two years. After that, the next legislature must reauthorize funding to support continued operations

HB 2 is a very powerful policy-making tool.

- Agencies must have an appropriation to spend funds from the treasury
- The legislature is the appropriations source
- The legislature can place conditions on receipt of appropriations. If the agency accepts the funds, it accepts the conditions of the appropriation
- Agencies must comply with HB 2 appropriations and conditions

HB 2 is a policy roadmap for the state. Agencies, interim legislative committees, and members of the public all use and must comply with its provisions, and rely on its direction.

HB 2 and the Range and Limitations of Legislative Action

While HB 2 is a powerful tool, it is also important to remember that it is a temporary appropriations bill. The state's constitution prohibits the use of HB 2 for any other purpose other than to fund operating expenses for the three branches of government, to pay debt service, and to fund public schools.

The legislature cannot put an appropriation or condition of appropriation in HB 2 that conflicts – in any way – with substantive law. If the instructions, restrictions, or allowances provided to an agency through language or other conditions are to be effective, and if they are to carry the necessary authority to compel action, there can be no conflict with substantive law. This issue is discussed in more detail in the “HB 2 Appropriations Tools” section of this manual.

⁵While HB 2 is the dominant source of appropriations authority for state agencies, it is not the only source. Other appropriations bills as passed by the legislature can also provide funding authority. Statutory appropriations can also provide funding authority, and these do not require reauthorization by each legislature. Some funds, such as private and most proprietary funds, can be spent under general laws or contracts. During the interim, an agency could also receive budget amendment authority.

At the same time, it is important to remember that:

- **HB 2 is law.** If the legislature has included a provision in HB 2 that instructs and requires an agency to do something and if that provision meets legal requirements, the agency is compelled to follow instructions. If the agency chooses *not* to, the legislature has two primary avenues of recourse.
- **Legal Action.** The legislature can compel compliance with provisions through legal action
- **Budget Action.** During the next session, the legislature can include adjustments to budgets, or can clarify or strengthen measures.

Obviously, taking legal action against an agency is a major step and one that is only taken under extreme circumstances. Waiting until the next session to take action means that the legislature's express instructions will not be followed for an entire interim. Non-compliance with parts of the law can undermine the force of the remainder of the law. It is therefore important that agencies know exactly what is expected of them and understand the consequences of non-compliance.

There will also be times when change impacts the language or other conditions set by a provision. In that case, the legislature may wish to provide a mechanism for legislative review and may allow updates relative to specific issues during the interim through such bodies as the Legislative Finance Committee.

Content and Form of HB 2

HB 2 consists of 4 main parts:

- Boilerplate language
- Appropriations by program and agency
- Agency specific language
- Internal service rates

Subcommittees make recommendations for all components with the exception of boilerplate language. Each component is introduced in the following sections.

Boilerplate Language

Boilerplate language is language at the beginning of HB 2; in general, it applies to all agencies. Boilerplate language serves a number of purposes, including but not limited to:

- Establishing basic parameters for the budget and accompanying narrative
- Taking care of legal niceties (e.g., severability clause)
- Explaining terms and concepts, their application and related requirements
- Providing other directions, restrictions, requirements, or general legislative expectations
 - If directions or sets of other instructions, restrictions, or expectations apply to all agencies, they should be inserted in boilerplate language
 - There is some question as to what activities are appropriate to place here. So, insertions to boilerplate should be used sparingly. Your LFD analyst can advise

Action on boilerplate language begins when the House Appropriations Committee begins holding hearings on the bill, sometime after the 45th day.

Appropriations by Program and Agency

As the vehicle for providing appropriations to operate most functions of state government, HB 2 looks different than other bills, which either create new statutes or alter or otherwise amend current statute.

- Appropriations are provided to each program of state government requiring an appropriation by fund type – general fund, state special revenue, federal revenue, and “other”
- The legislature can specify “line-items”, which are appropriations at less than the program level for specific purposes. Line-items are discussed in more detail in the HB 2 Appropriations “Tools” section of this manual

Agency Specific Language

HB 2 can (but does not have to) include language to accompany an appropriation. Like boilerplate language, such language can serve a number of purposes. Unlike boilerplate language, under all but unusual circumstances, accompanying language will apply only to the specific agency. (The legislature may include language that impacts more than one agency. In that case, the language will generally be included in the other agency’s budget.) The purposes of language are to provide:

- Directions, restrictions, requirements, or general legislative expectations
- A language appropriation (discussed in the “HB 2 Appropriations Tool” section)
- Contingency language for other appropriations (also discussed in “HB 2 Appropriation Tools” section)

Because language can be a powerful tool in the budgeting process, its uses and limitations are discussed in more detail in the “HB 2 Appropriation Tools” section of this manual.

Internal Service Rates

The legislature is responsible for approving rates charged by state agencies to other units of state government for services provided. These rates are published in HB 2. In the sections that follow, the various ways of providing greater flexibility to an appropriation are discussed in more detail.

HB 2 APPROPRIATION TOOLS

When the legislature determines a budget for a program or agency, it is not just providing an authorization to spend. It is also expressing its will and/or expectations concerning expenditure of funds or a given agency action.

- According to statute, agencies must spend funds in accordance with the expressed intent of the legislature.
- Conditions *can* be placed on an appropriation. The receiving entity (agency) can choose to accept the appropriation or not. If they choose to accept, they have also accepted any conditions attached.⁶ Conditions are placed in a number of ways:
 - The addition of language that expands, clarifies, compels, or instructs
 - Segregation of appropriations from the program appropriation to allow for:
 - a. Individual tracking and review
 - b. Restrictions on expenditures
 - c. Flexibility on expenditures between fiscal years
 - d. Requirements that specific items be left out of the next executive budget base

In order for the legislature to fully exercise its authority and optimize its opportunities, it must understand the tools and how to use them effectively. This section is designed to serve that purpose by discussing the tools, as well as the opportunities and limitations they imply. The discussion includes:

- HB 2 language
- Line items, which allow the legislature to break out expenditures
- Three different appropriations designations:
 - Contingency appropriations
 - Language appropriations
 - Legislative contract authority

HB 2 Language – Powers, Possibilities, and Limitations

Language inserted in HB 2 can be a very powerful and effective tool that can clarify and establish legislative policy, compel action, and express legislative intent. Language (along with the provision of line item appropriations) is the primary vehicle with which the legislature provides a balance between the flexibility necessary to manage agencies in accordance with statutes and other mandates, and specific legislative direction. The legislature must be aware of language requirements and limitations in order to make this tool effective. This section discusses some of the important considerations to be used when determining if and when to add language to HB 2.

Legal Basis and Consideration of Language

Language in HB 2 is law.

- The General Appropriations Act is law
- The General Appropriations Act is restricted in the state constitution to appropriations for the “ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools.” Conditions (including language) germane to the purpose of the General Appropriations Act are permissible
- Once an agency accepts an appropriation, it must spend the funds in accordance with legislative conditions and accept any limitations established in HB 2

⁶ Including the Montana University System

Limitation and Legal Requirements

While the Montana Constitution and statute recognize HB 2 as law, the constitution also places a very important limit on what HB 2 can do. The most important thing to keep in mind when crafting language or deciding whether to include language in HB 2 is:

HB 2 cannot, expressly or by implication, amend (supplant, or conflict with) substantive law. If the legislature wishes to change substantive law, it must be included in a separate bill.

If language does not meet this basic requirement, or if it in any other way cannot compel action, it is either illegal or meaningless. Two primary consequences arise from language that does not meet these requirements.

Legal Challenge: Language that directly or through implication attempts to change substantive law is subject to legal challenge. In addition to the expense involved in a lawsuit:

- e. The legislature's directives are not carried out and, in the case of an unconstitutional appropriation, funds are not available for the legislature's intended purpose
- f. Lawsuits often have unintended consequences. Rulings can result in greater restrictions or involve issues that were not originally envisioned

While HB 2 carries a clause that says if one section is declared unconstitutional it is severed from the rest of the bill, this clause does not guarantee that the entire bill could not be declared unconstitutional, particularly when the language is included as a boilerplate. If this were to occur, state government would not have the money necessary to operate until the legislature could convene in a special session to pass a new appropriations bill.

Lack of compelling authority: Inappropriate or meaningless language can diminish legislative authority and power. This places agencies in a position in which they do not have to comply with HB 2 language. This, in turn, undermines all language and the general authority of HB 2. In addition, interim legislative committees and others can be left to choose which language to enforce.

For these reasons, when crafting language, the legislature must remain aware of applicable appropriations law, as well as the laws governing agency operations. The legislature must be careful to ensure that none of the language used in any way conflicts with or attempts to amend this law.

Appropriations Law

While the legislature should be aware of any statutes that would render its action in HB 2 illegal, there are a number of critical appropriations laws of which the legislature should be aware when establishing appropriations language or other restrictions. HB 2 cannot:

- Give prior approval to supplemental appropriations or budget amendments
- Require an agency to expend general fund prior to expending other sources of funding
- Require or prohibit the inclusion of certain budget items in the Governor's Budget for the next biennium
- Prohibit agencies from hiring FTE or filling certain positions
- Include any other condition that conflicts with substantive law

Powers and Possibilities

If the language is within legal requirements, the legislature has broad discretion. The following uses a combination of real-world and theoretical examples to illustrate some of the situations in which language can be used as a budgeting tool.

Language can be used to place a contingency on an appropriation

Example: “Up to \$75,000 of the amount of the appropriations in item 6f is contingent upon receiving a transfer of the equivalent amount of funds of public health and human services...”

Language can be used to clarify what the legislature expects the agency to do, or do with the appropriation

Example: “Expenditures for all provider rate increases approved by the legislature must be limited to the dollar amounts appropriated rather than a percentage amount...”

Example: “The department shall distribute the funds in ...a way that provides reasonable assurance that the funds are used solely for direct care wage and benefit increases...”

Language can be used to establish broad or specific legislative policy on the expenditure of the appropriation, including establishment of goals and objectives as long as it conditions an appropriation.

Example: “Item 4c is contingent upon the department pursuing the following goals and objectives and reporting on progress to the 58th legislature:

1) register all livestock brands by December 31, 2010...”

(If this type of language does not condition an appropriation, it must be included in another bill.)

Language can be used to direct an agency to do something as long as it conditions an appropriation as long as it conditions an appropriation.

Example: “Item 4b is contingent upon the department (Fish, Wildlife and Parks in this instance) reporting to the 58th legislature on projects funded with federal Sikes Act money and state match money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.”

Language can be used to place restrictions on the use of an appropriation

Example: “Item 6f may only be used to provide additional funding to school districts for computer equipment.”

Line Items

HB 2 includes appropriations at the program (or division) level as a default. Once an appropriation is made, three courses of action come into play:

- 1) The legislature may or may not have given specific direction on use of the money.
- 2) Statute allows, in the absence of prohibition, the movement of funds for different purposes or to different programs. If an agency has excess authority in one area, they can transfer that authority to another program within the agency, unless the legislature has prohibited that transfer.
- 3) Expenditures generally become part of the base budget used as the starting point for the next biennium’s budget, unless there is reason to remove them from the base. If expenditures are part of the base, a specific decision package must be presented to remove them.

The legislature can exercise some additional control, in certain circumstances, by using line items.

What are Line Items? What is the Theory Behind Their Use?

Line items are specific appropriations in HB 2 separated from the appropriation of the program of which they are a part. Line items highlight certain appropriations and ensure that they can be separately tracked on the state accounting system.

There are two aspects of line iteming: legislative control versus agency discretion.

As stated, statute allows, in the absence of prohibition, an agency to transfer funds to another program, or to use funds appropriated for one purpose for another purpose. Generally, this allowance recognizes the dynamic nature of state government, and gives managers the latitude to manage budgets as necessary. At the same time, as the policy makers for the State of Montana, the legislature has certain expectations for the expenditure of the funds it provides to state agencies, and needs to retain some control over the expenditure of those funds.

Line items represent a balance between the legislature's ability to set policy and control budgets, and agencies' ability to manage in a dynamic environment.

What are Line Items Used For?

Line items may be used to:

- Restrict the spending of appropriations to a specific purpose so that they cannot be spent elsewhere;
- Ensure that funds do not appear in the base in the next session;
- Provide for some other restriction, intent, or legislative guidance as to the expenditure of the funds;
- Provide an easy way to track expenditures for a specific function to determine how much was expended during the biennium; and/or
- Allow the agency to spend funds in either year of the biennium.

Mechanics of Line Iteming

The purpose of line items can be specified through the use of one or more designations. The designation types are *restricted*, *one-time-only (OTO)*, and *biennial*, and are described as follows:

Restricted –putting this designation on the appropriation will ensure that the funds cannot be used for another purpose. This designation can be used under a number of circumstances, including but not limited to the following scenarios:

- The amount necessary to fund the function – or whether the function will be funded at all is unclear and the legislature does not wish to provide excess authority that could be used elsewhere. (Example: funds have been requested for an event that may not occur, such as flood control)
- The legislature wants to ensure that the function funded is actually funded at that level, instead of taking lower priority through transfer of the funds during the interim

OTO (One-Time-Only) – this designation specifically states that the expenditures associated with the line item cannot appear in the base budget in the next biennium. There are a number of circumstances under which the legislature may wish to prevent expenditures from appearing in the base:

- It is necessary to gauge the impact or efficacy of a function rather than assuming it will become an on-going function of state government. In this instance, if the program is to be continuing,

the agency must request funds in a new proposal that allows for specific review and requires positive action

- Costs are for start-up only and are not meant to continue either because the start-up costs are no longer necessary or because the agency is expected to continue funding through the existing budget
- the function or project is expected or required to terminate in the coming biennium

Real World Examples:

- 1) The legislature started a new program to help troubled youth further their educations. Due to the lack of history, the appropriation was made as an OTO (One-Time-Only) to allow the legislature to gauge its effectiveness before funding continuance of the program.
- 2) The legislature made a one-time-only provision of resources to restock Echo Lake with fish.

Biennial – appropriations are generally made for one year only. If the legislature wishes the agency to be able to spend the money over the entire biennium, it must designate the appropriation as biennial. The primary reason for providing a biennial appropriation is that when expenditures will take place over the biennium is unknown.

Real World Examples:

- 1) Audits, for which an agency must pay, may take place in either the first or second year (or both) of a biennium, depending upon the schedule adopted.
- 2) The legislature established the Children's Health Insurance Program last biennium. Without a history of participation and because it was unknown how soon the program could be started and when enrollees would begin receiving services, the legislature provided a biennial appropriation.

Contingency Appropriations

Contingency appropriations are provided when a specific event occurs or if certain conditions are met. Contingency appropriations are reserved for those instances when it is not certain whether:

- The funds required will actually become available; and/or
- The function will actually be performed

Real World Examples:

- 1) EIS: \$200,000 (state special revenue)
- 2) "Item a is provided in the event the department must perform an environmental impact statement."
- 3) In this example, the department has \$200,000 of authority in the event that they need to perform an environmental impact study (the actual cash would be provided by the entity for whom the EIS would be performed).
- 4) The following is an example of a reverse contingency appropriation.
- 5) "Item 8 contains a general fund appropriation of \$27,723 in FY 2000 and \$57,108 in FY 2001 for anticipated increases in tuition by the Board of Regents of 4 percent. If the Board of Regents approves college tuition increases of less than 4 percent, the general fund appropriation will be reduced a proportionate amount."

One of the most common types of contingency appropriations is *in the event a bill passes*. The joint Appropriations and Finance and Claims committees have consistently recommended that subcommittees do not employ this type of contingency appropriation, but rather have the legislature add the appropriation later if the bill appears assured of passage. Because of timing issues, the Conference Committee frequently employs contingency language when adding funds to implement bills.

Advantages and Disadvantages to Using Contingency Appropriations

Advantage: Contingency appropriations allow for the provision of appropriations in uncertain conditions while assuring that funds will not be used if the contingency is not met.

Disadvantage: Since contingency appropriations – unless they are placed in language – are counted in bill totals, they can inappropriately inflate budgets and reduce the amount assumed available for other purposes in the event contingencies are not met.

Legislative Options

If the legislature feels that a contingency appropriation is in order, the legislature may want to consider restricting the appropriation to the stated purpose. That way, if the event does not occur, the agency will not be able to move the authority to another area of the budget.

Language Appropriations

Language appropriations are made in the language of HB 2, rather than in program or line item appropriations.

Advantages and Disadvantages to Using Language Appropriations

Advantage: The bill does not include what may turn out to be superfluous appropriations that result in an inappropriate inflation of the totals. For example, a language appropriation may be requested in the event that a specific event happens, the possibility for which exists but not in any certainty. (E.g., DEQ requests state special revenue authority IN CASE they have to do an environmental impact study.)

Disadvantage: Funds that might be spent are not included in the bill totals and may be overlooked in examining the ending fund balance. Consequently, the picture of how much the *potential* appropriation is remains unclear. This is especially troublesome when the language appropriates general fund. Consequently, the legislature should be extremely careful when appropriating general fund in language.

Required Elements

If a language appropriation is desired, certain elements, illustrated in the following example from the 2001 biennium, **must** be present if the appropriation is to be valid.

“The department is up to \$172,000 of additional federal spending authority during each year of the 2001 biennium for the purpose of complying with the clean water action plan when the use of the funds is identified and when the funds become available from EPA.”

The four required elements:

- Clearly states money is appropriated
- Provides a maximum appropriation amount
- States the funding source
- Details how the appropriation is to be used

Legislative Contract Authority

Legislative contract authority (LCA) is a type of appropriation given to agencies that traditionally receive a number of budget amendments. The philosophy behind the LCA is that while agencies may know they will receive funds in the interim, they may not know when or what the funds are to be used for. LCA authority is requested so that they can spend this money without going through the budget amendment process (or meet any of the criteria for adding budget amendments⁷). The legislature essentially provides an appropriation in anticipation of an unknown. Therefore, under LCA, agencies not only do not have to meet budget amendment criteria, they are allowed to undertake projects and expenditures without legislative review.

Legislative Options

LCA authority should be used sparingly, if at all. Since funds are those that would normally be added through budget amendment, they should not be used for ongoing projects or funding sources. Ongoing funds should be requested in HB 2. If LCA is approved, certain restrictions should be employed. In past biennia, the following language has been added to HB 2 in conjunction with the provision of LCA:

- Legislative contract authority applies only to federal funds
- Expenditures must be reported through state accounting records and kept separate from present law operations. In preparing the 2003 biennium budget for legislative consideration, [OBPP] may not include the expenditures from this item in the present law base
- A report must be submitted by the department to the LFD following the end of each fiscal year of the biennium. The report must include a listing of projects complete with the related amount of expenditures and FTE for each project

⁷Budget amendments allow authorities other than the legislature to add spending authority when the legislature is not in session. The “approving authority” (usually the Governor) can only approve budget amendments that:

1. add federal funds (state special revenue funds can be added only due to an “emergency”) or tuition (certain other minor exceptions exist in other funds);
2. make no present or future commitment of increased general fund;
3. provide additional services;
4. address issues that the legislature could have had no knowledge of during the legislative session; and
5. do not extend beyond the end of the biennium.

APPENDIX A

Example of Boilerplate Language In HB 2 for the 2009 Biennium



AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2011; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2009".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2011 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2013 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. 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.

Section 6. Personal services funding – 2013 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2013 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other

APPENDIX B

Example of Internal Service Rates In HB 2 for the 2009 Biennium

61st Legislature

Direct Deposit - No Advice Printed

HB0002

Fiscal 2011

Fiscal 2010

3. General Services Division

a. Facilities Management Bureau

Office Rent (per sq. ft.)

Warehouse Rent (per sq. ft.)

Grounds Maintenance (per sq. ft.)

Project Management - in-house

Project Management - contracted

b. Print and Mail Services

Internal Printing

Impression Cost

1-20

21-100

101-1000

1001-5000

5000 +

Color Copy

8 1/2 x 11

11 x 17

Ink

Black per Sheet

Color

Special Mix

Large Format Color per ft.

Collating Machine

Collating Hand

\$9,002

\$5,010

\$0,543

15%

5%

\$8,869

\$4,804

\$0,541

15%

5%

\$0,0762

\$0,0336

\$0,0193

\$0,0078

\$0,0039

\$0,25

\$0,50

\$0,0002

\$15,00

\$25,00

\$12,70

\$0,0072

\$0,60



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