

Board Financial Accounting Options vis-a-vis Concerns Raised by Boards

as of 7/11/2014

Issue	Enterprise Fund	Contingency Appropriation Authority	Statute Change	Other Considerations
<p>1. Too much money in Board coffers in violation of 17-2-302, MCA, which limits cash balances to either: a) no more than twice the annual appropriation, or b) an amount not greater than the biennial appropriation.</p> <p>Key words:</p> <ul style="list-style-type: none"> • Cash (generated by fees / budget) • appropriation authority from Legislature 	<p>A) Because enterprise funds run like a business, the statute that limits cash balances in a fund, 17-2-302, MCA, does not apply. This resolves audit "dings".</p> <p>B) An enterprise fund is to run like a business. If the department acts like a holding company that assigns its costs to a board, it is unclear whether either a board or the legislature would have a say through budgeting over the department's cost assignments -- unless there is a requirement for legislative review. The department says a legislative audit would give the legislature control, but audits are post facto "advice".</p>	<p>A) Giving each board contingency appropriation authority may help larger boards avoid the audit "ding" and might resolve a dilemma for the department in deciding how to move appropriation authority among boards or bureaus. The appropriation authority is not being requested for each board.</p> <p>B) If the department itself gets contingency appropriation authority, the department would not have to provide a "cushion" in any board's budget. (Budget dictates cash & authority.) The department says this would not affect board costs. But there is a question whether boards with a current cushion in their account actually have too much money even if lacking approp authority..</p>	<ul style="list-style-type: none"> • To help avoid an audit "ding" the "fees commensurate with costs" statute, 37-1-134, MCA, could be changed to specify fees in addition to those listed, which could include anticipated legal fees that are not currently listed. The word "reasonable" was removed in 2005 from the statute because it was not specific. • The department has proposed a change either in the fees definition or a change in fund type and fees definition. 	<p>A) A board technically sets its own budget but has no say over the Department's charges for the Department and for the Division. It is unclear how an enterprise fund would be regulated so fees stay commensurate with costs if a board, the division, or the department expands the concept of costs.</p> <p>B) If Boards were allowed to contract for services currently provided by the Department, budgeting might be somewhat easier and the Department's indirect costs limited. Contracting might be an accompaniment to an enterprise fund.</p>
<p>2. Not enough money in Board coffers</p>	<ul style="list-style-type: none"> • An enterprise fund would not help boards that are underfunded. 	<ul style="list-style-type: none"> • Appropriation authority is not a concern for underfunded boards unless the need to meet unanticipated costs requires additional appropriation authority as well as a fee increase. 	<ul style="list-style-type: none"> • A board does not have much choice but to raise fees to cover costs. The Department has the ability to offer a temporary loan but this must be paid back. 	<ul style="list-style-type: none"> • Specifically include authority for the governor to remove a board member "for cause" and specify that cause means the failure to increase fees to meet costs. Removal for cause is in 2-15-124, MCA, not for all licensing boards.

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3. Not enough appropriation authority from Legislature	<ul style="list-style-type: none"> Using an enterprise fund would take licensing boards off the HB 2 budget by removing the legislature from providing appropriation authority unless specifically required to do so. (E.g. the Lottery is an enterprise fund but the Legislature provides appropriation authority.) 	<ul style="list-style-type: none"> As stated above in #1, appropriation authority could be provided in a contingent appropriation to either each board or to the Department. 	<ul style="list-style-type: none"> Revised language could provide greater appropriation authority to boards or exempt boards from 17-2-302, which might make the budget look inflated under the current state special revenue approach. 	<ul style="list-style-type: none"> Remove the state from being involved in board infrastructure. An occupation or profession might be licensed and misdeeds investigated and handled through a special panel, more like attorney discipline.
4. Financial oversight by Legislature	<ul style="list-style-type: none"> An enterprise fund only has legislative budgetary oversight if required by statute, like the Lottery. 	<ul style="list-style-type: none"> Allows a cushion of a certain amount but retains legislative budgetary review and oversight. 	<ul style="list-style-type: none"> Current structure would not need changing. 	
5. Financial control	<p>Sets up the potential for:</p> <ul style="list-style-type: none"> the Department to expand direct or indirect costs over which neither the legislature nor boards have control. a Board to increase fees for nondepartment, board-determined costs with no limit on expenditures. 	<ul style="list-style-type: none"> Retains the current budget structure but allows a certain amount of appropriation authority either to a board or to the Department for unanticipated costs 	<ul style="list-style-type: none"> Any change in financial control--giving more control to the boards or allowing for contracted services--would require statutory changes. 	
6. Individuals trying to "break the board" by bringing numerous complaints	<ul style="list-style-type: none"> An enterprise fund would not offset efforts to "break a board" through complaints. 	<ul style="list-style-type: none"> Contingency appropriation authority would not offset efforts to "break a board" through complaints. 	<ul style="list-style-type: none"> Providing statutory authority to a board to retain all or a portion of fines to the board if the board prevails in a legal action might offset unfounded complaints. 	<ul style="list-style-type: none"> The Department's plan to differentiate between board-generated complaints for late renewals, etc., and other complaints might counter "break the board" efforts.