



**Montana Legislative Services Division**  
**Legal Services Office**

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To: Pat Murdo  
From: Julie Johnson  
Re: Appropriating Enterprise Funds  
Date: April 12, 2016

**QUESTION PRESENTED AND BRIEF ANSWER**

Recently, I was asked by the Legislative Fiscal Division whether monies in an enterprise fund need to be appropriated by the Legislature. More specifically, the question focused on whether the newly created enterprise fund for the Board of Public Accountants codified at section 37-50-209, MCA, needed to be appropriated under section 17-7-502, MCA.

Enterprise funds are a type of proprietary fund, and typically the Legislature does not appropriate proprietary funds. However, as discussed below, in the case where the enterprise funds are being used as part of a program that is not an enterprise function, I believe the enterprise funds need to be appropriated, either in House Bill 2 or under section 17-7-502, MCA.

**LAW**

Article VII, section 14, of the Montana Constitution provides that "[e]xcept for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof" (emphasis added).

Section 17-8-101, MCA, further addresses the appropriation and disbursement of money from the state treasury. Subsections (2) and (8) discuss enterprise funds:

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type . . . may be paid out of the treasury:

- (a) by appropriation; or
- (b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that is required by law to transfer money to the general fund or to any other appropriated fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.

(Emphasis added). The emphasized language provides that enterprise funds that are not used as part of a program that is an enterprise function requires an appropriation. One can reasonably infer then that enterprise funds that are used as part of a program that is an enterprise function may not require an appropriation.

As pointed out in the Legislative Fiscal Division publication entitled *State Finance*, examples of enterprise funds include the operation of the state liquor warehouse, the state lottery, and the prison ranch. Funds that are received from the operation of the prison ranch may be used to maintain the operations of the prison ranch, and they are not appropriated in HB 2 or under section 17-7-502, MCA.<sup>1</sup>

## ANALYSIS

During the 2015 legislative session, the Legislature passed HB 560, which created an enterprise fund for the Board of Public Accountants. Section 1 of HB 560 has been codified at section 37-50-209, MCA, and provides as follows:

**37-50-209. (Temporary) Enterprise fund.** (1) There is an enterprise fund, as described in 17-2-102, established for the use of the board. The money in the fund is statutorily appropriated as provided in 17-7-502.

(2) All licensing fees, other money collected by the department on behalf of the board, and all interest or earnings on money deposited in the enterprise fund must be deposited in or credited to the fund.

(3) Money in the enterprise fund must be invested by the board of investments pursuant to the provisions of the unified investment program for state funds.

(4) The enterprise fund must retain a cash reserve balance of at least 15% of the average of the last 3 years of revenue as needed for operation of the board and measured on completion of the license renewal cycle.

(5) The enterprise fund may not include money taken from the general fund.

In this case, according to section 37-50-209, MCA, the use of the enterprise funds is for investment in the Unified Investment Program (UIP) for state funds. I think it is unlikely that investing through the UIP would be considered as an enterprise function of the Board of Public Accountants. Therefore, the Legislature correctly appropriated the enterprise fund in section 37-50-209, MCA.

## GENERAL CONCLUSION

In general, it is my preliminary conclusion that any board that establishes an enterprise fund would still need to receive an appropriation if the fund is used to pay for an activity that is not considered an enterprise function. Whether or not an activity is considered an enterprise function would need to be considered on a case-by-case basis.

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<sup>1</sup> In a case in which "profits" in the enterprise funds are transferred to the general fund, such as the liquor warehouse and the state lottery, the costs to run those programs must be appropriated as required under section 17-8-101(8), MCA.