

MCA 37-1-134

Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 467 in first sentence after "set" inserted "board", after "fees" deleted "reasonably", after "area" inserted "that are commensurate with", and after "costs" inserted "for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs", in fourth sentence after "law" deleted "each board within", after "establish" inserted "standardized", and after "fees for" substituted "administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program" for "program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education", at beginning of sixth sentence substituted "Administrative service" for "Board", after "specific" inserted "board or", after "distributed to" inserted "board or", and at end after "determined by the" substituted "department" for "board", and at beginning of seventh sentence after "Each board" inserted "and department program"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble to Ch. 345, L. 1981, provided: "WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisdiction."

Statement of Intent: The statement of intent attached to SB 412 (Ch. 345, L. 1981) provided: "A statement of intent is required for Senate Bill 412 because it grants licensing boards within the Department of Professional and Occupational Licensing the authority to set fees.

Presently fees charged by most licensing boards are set by law. Wherever changed circumstances require a change in fees legislation is required. Each session several bills are introduced to modify board fees. By allowing boards to set their own fees, flexibility is provided the boards to meet changing circumstances. At the present time, fees set by law are not based upon actual costs incurred by licensing boards in carrying out their various functions.

It is the intent of the Legislature that fees set by licensing boards be reasonably related to the costs of the respective programs. "Programs" of the licensing boards are intended to be such areas of responsibility as applications, examinations, renewals, and reciprocity. "Reasonably related" is intended to mean that the department generally breaks down the costs associated with the various programs and sets each fee at a level to

cover these costs and the costs of maintaining the ongoing operations of the board. "Reasonably related" does not mean the department is required to maintain an exact system of actual costs, but rather means the department should generally allocate costs of the program equitably among the various fee categories."

Table 4

Professional and Occupational Licensing Boards Fees Commensurate with Costs

POL Board	Fiscal Year 2012-13 Fees Commensurate with Costs	Fiscal Year 2011-12 Fees Commensurate with Costs
Board of Alternative Health Care	No	No
Board of Architects	No	No
Board of Athletic Licensing	Yes	No
Board of Athletic Trainers	No	No
Board of Chiropractors	No	No
Board of Clinical Lab Science Practitioners	No	No
Board of Dentistry	Yes	Yes
Board of Funeral Services	No	Yes
Board of Hearing Aid Dispensers	No	Yes
Board of Landscape Architects	No	No
Board of Licensed Addiction Counselors	No	No
Board of Massage Therapy	No	No
Board of Medical Examiners	No	N/A
Board of Nursing	N/A	No
Board of Nursing Home Admin	No	No
Board of Occupational Therapists	No	Yes
Board of Optometry	No	Yes
Board of Outfitters	No	No
Board of Pharmacy	No	No
Board of Physical Therapy Examiners	No	No
Board of Plumbers	No	Yes
Board of Private Alternative Adolescent Residential or Outdoor Programs	No	Yes
Board of Private Security Officers & Investigators	No	No
Board of Professional Engineers	N/A	No
Board of Psychologists	Yes	Yes
Board of Public Accountants	No	No
Board of Radiologic Technicians	No	Yes
Board of Real Estate Appraisers	No	No
Board of Realty Regulations	No	Yes
Board of Respiratory Care	No	No
Board of Sanitarians	Yes	No
Board of Speech Pathologists	Yes	No
Board of Social Workers & Professional Counselors	Yes	Yes
Board of Veterinary Medicine	Yes	Yes
Cosmetology Board	No	N/A
Electrical Board	N/A	Yes

Source: Compiled by the Legislative Audit Division.

N/A –These boards have a two-year licensing renewal, therefore, were evaluated on a two-year cycle.

Example - Board of Massage Therapy

<u>Account</u>	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
Assets	\$889	\$71,140	\$102,516
Liabilities	\$4,126	\$4,077	\$2,840
Fund Equity	\$(3,237)	\$67,064	\$99,673
Revenues	\$85,142	\$172,500	\$154,755
Expenditures	\$123,630	\$102,154	\$122,107
Difference	\$(38,488)	\$70,346	\$32,648

MCA 17-2-302

Limitation on balance in state or local charge for services fund -- exceptions -- audits. (1) Except as provided in this section, a state agency that deposits money into a state charge for services fund or a local government entity that deposits money into a local charge for services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for that year or greater than the biennial appropriation from the account for the biennium, which includes that year from the state fund or local fund as shown in the state agency's or local government entity's initial operating plan.

(2) A state agency may maintain more money in a state fund or a local government entity may maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the state agency certifies to the legislative finance committee, established by 5-12-201, or the manager of the service or function of the local government entity using money in a local fund certifies to the governing body of that entity:

(a) the date on which the state fund or local fund balance exceeded the limitation provided in subsection (1);

(b) the amount of money by which the state fund or local fund balance exceeded the limitation provided in subsection (1);

(c) the amount of money usually needed in the state fund or local fund for the operation of the service or function of the state agency or local government entity for 1 year, along with supporting facts;

(d) whether the amount of money within the state fund or local fund that is in excess of the limitation provided in subsection (1) is necessary for the operation of the service or function of the state agency or local government entity because of:

(i) an emergency;

(ii) a special or unusual circumstance; or

(iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

(e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation claimed in subsection (2)(d).

(3) The legislative audit division shall include in financial audits performed by or at the direction of the legislative audit division and an independent auditor shall include in an audit performed by the independent auditor pursuant to Title 2, chapter 7, part 5, a determination of whether money is or has been retained in a state charge for services fund or in a local charge for services fund contrary to the requirements of:

(a) this section; or

(b) 17-2-303.

(4) Except as otherwise provided in 17-2-301(3)(b), this section does not apply to:

(a) a charge for services made by one state agency to another state agency or by one local government entity to another local government entity;

(b) a state charge for services fund or a local charge for services fund used only for replacement of buildings or to pay the costs of other future capital projects;

(c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute;

(d) fees, charges, and payments established pursuant to the revolving fund programs created by and administered pursuant to Title 75, chapter 5, part 11, and Title 75, chapter 6, part 2; or

(e) charges for services deposited in accordance with law into:

(i) a debt service or bond reserve fund;

(ii) the state general fund;

(iii) a county general fund; or

(iv) a city, town, or consolidated government general fund.

History: En. Sec. 2, Ch. 270, L. 1997.

Excess Cash Balances (17-2-302)

POL Boards	FY12 – Cash Balance Less than twice the Appropriation	FY13 – Cash Balance Less than twice the Appropriation
Board of Architects	No	No
Board of Athletic Licensing	No	Yes
Board of Athletic Trainers	Yes	No
Board of Landscape Architects	Yes	No
Board of Nursing	Yes	No
Board of Pharmacy	No	No