



Montana Legislative Services Division
Legal Services Office

To: Legislative Finance Committee
From: Julie Johnson, Staff Attorney
Re: Options for Additional Budget Scrutiny of Certain Agencies/Zero-Based Budgeting (ZB)
Date: May 31, 2016

BRIEF OVERVIEW

As noted in the report on Budget Policy Choices presented at the March 2016 meeting, the LFC has expressed interest in creating a long-term mechanism to address the legislative desire to increase budget scrutiny for certain agencies. In that report, the LFD offered three options for the LFC to consider. One option is to add a zero-based budgeting designation in the boiler plate language of HB 2 that would work as the OTO designation does. The other two options involve drafting legislation such as a standalone bill or a companion bill, to allow for zero-based budgeting for certain agencies.

The primary focus of this memo is on the first option and concerns regarding this approach.

ISSUE

Whether using a zero-based (ZB) designation in HB 2 amends or conflicts with other statutes, in violation of 17-8-103(2)?¹

BRIEF ANSWER

Of the three options offered, putting a ZB designation in HB 2 is the least viable option from a legal perspective because it arguably amends the definition of base budget found in Section 17-7-102, MCA. In order to use a ZB budgeting approach, separate legislation is most likely required. However, another option to provide additional scrutiny of an agency to is to include a language amendment under an agency in House Bill No. 2 that the Legislature requests or recommends that the agency present their budget in a zero-based format to the joint subcommittees in the 2019 session.

LAW

Section 17-8-103(2), MCA, provides that a condition or limitation contained in an appropriation bill cannot amend a statute.

¹ Section 17-8-103(2), MCA, provides:
Expenditures in excess of appropriation unlawful -- conditions in appropriation acts.
(2) A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend any other statute. (Emphasis added).

Currently, base budget is defined in § 17-7-102(4)(a), MCA, as:

"Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

ANALYSIS AND CONCLUSION

The proposed option for a ZB designation in HB 2 is to include a sentence in the boiler plate of HB 2 that provides: "*An appropriation item designated "Zero-Based" may not be included in the base budget for the 2021 biennium.*" However, this use of the zero-based designation in HB 2 runs contrary to the definition of base budget in § 17-7-102(4)(a), MCA, if it is applied to agency operations that are of an "ongoing and nonextraordinary nature."

Introducing and implementing zero-based budgeting in HB 2 likely exceeds the scope of what a general appropriation bill can do by law. To implement a zero-based budgeting policy, it is better to enact legislation as proposed by the LFD.²

² A bill to implement partial ZB budgeting was introduced in the 2011 session (HB 343) and included amendments to §17-7-102, MCA.