

LAW ENFORCEMENT ACADEMY FUNDING ISSUES

A Report Prepared for the

Legislative Finance Committee

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ISSUE AND BACKGROUND

The Department of Justice has identified a revenue shortfall within the Montana Law Enforcement Academy (MLEA) state special revenue fund that could create a funding shortfall of approximately \$1.1 million over the 2005 biennium.

The MLEA fund is new, established by the legislature during the 2003 session in HB 124. HB 124 established a \$10 surcharge on “a defendant who is convicted of criminal conduct under state statute or who forfeits bond” in courts of limited jurisdiction other than small claims courts (i.e., municipal and county courts). This surcharge was to be reported to the Department of Revenue by the counties and deposited into a state special revenue fund established for the use of the MLEA.

The fiscal note for HB 124 projected that approximately \$1.3 million in revenues would be received in each year of the 2005 biennium. This legislation was used as the vehicle for a fund switch in HB2, which replaced approximately \$2.2 million in general fund with state special revenue for the funding of the MLEA during the 2005 biennium. While the MLEA was primarily funded with general fund during the 2003 biennium, surcharge revenues were expected to provide the primary source of funding for the MLEA in the 2005 biennium.

However, collections are not meeting the projections established in the fiscal note. As of January 31, 2004, approximately \$205,000 in surcharge revenues had been reported by the counties and deposited into the MLEA state special revenue fund. Based on these collections the MLEA fund may be expected to receive surcharge revenues of between \$370,000 to \$450,000 in fiscal 2004. This results in an overall funding shortfall of approximately \$550,000 in this fiscal year alone.

COLLECTING VS. PROJECTING

Although a lack of understanding of the new surcharge was initially identified at the county level, it did not appear to be wide-spread, and education efforts have cleared up any confusion. Per discussion with the Judiciary, based on their experience with the collecting of a similar surcharge, it is not felt that under-reporting at the county level is an issue in the continuing gap between revenues and projections.

Therefore, it appears that there are problems with the fiscal note attached to HB 124. Projections in the fiscal note relied upon historical collections of similar surcharges into the Court Automation Technology state special revenue fund, operated by the Judiciary. Although an attempt was made to account for differences between the Court Automation Technology and MLEA surcharges, several incorrect assumptions were used. Those errors combined to overstate projections.

CASH FLOW ISSUE AND THE EFFECT ON FUNDING LEVELS

The unexpected shortfall in revenues has led to a major cash flow issue within the MLEA fund. The MLEA fund receives revenues from two sources: 1) the \$10 surcharge; and 2) fees paid by course attendees. Due to the low level of surcharge collections, the account has a negative fund balance. An agency is permitted to operate a state special revenue fund with a negative balance, using temporary loans from other state special revenue funds. However, 17-2-107, MCA also stipulates that there be “reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year.” The department of Justice has operated the MLEA in a negative status with the expectation that revenues would eventually catch up to projections. End of year revenue projections into the fund, including fees, are not expected to top \$550,000. As of February 20, expenditures from the fund totaled approximately

\$620,000, and the total HB 2 appropriation from this fund for fiscal 2004 is over \$1.1 million. Therefore, the fund can be expected to be in a negative status through the end of the fiscal year. Additionally, if mitigating actions are not taken, the fund will be overspent to a level at which one calendar year's worth of revenues would not cover the negative balance.

This cash flow problem creates the primary issue of continued funding for the MLEA in the 2005 biennium.

DISCUSSION OF OPTIONS

The department has several options to address the revenue and funding issues, including:

1. Use inter-entity loans to maintain fund solvency.

This option may be necessary to ensure the fund closes out fiscal 2004 with a positive cash balance. However, without addressing the structural imbalance between revenues and expenditures, it will not be possible to repay the loan within one calendar year, as required by 17-2-107, MCA. Therefore, before recording the loan, the department will still need to take other actions to increase revenues or reduce expenditures from the account.

2. Reduce expenditures from the account

The department can reduce expenditures from the account by either reducing overall MLEA expenditures, or by shifting expenditures to an alternative funding source.

Reducing MLEA expenditures would be accomplished primarily by limiting the amount of training provided. Within the state of Montana, the standards for local government peace officers, detention officers, and public communications officers are set in administrative rule. Under current rules, all individuals employed by a local government entity in one of the aforementioned positions must attend the MLEA 12-week basic training course or equivalent training, and obtain certification within one year. The MLEA currently offers the basic course three times per year, with a maximum class size of 40 individuals. In addition, the MLEA also provides several professional-level courses for continuing education credit. The department states they are able to generally satisfy all training needs with this schedule without an extended waiting list. However, the demands for this training are great enough that eliminating one 40-member basic class per year would result in a backlog of applicants and an inability of local governments to keep their law enforcement operations fully staffed. With no MLEA class and no changes to training and certification standards, local governments would be forced to send new hires through other training programs, including other states' versions of the MLEA, in order to comply with the Montana standards. Since training and certification standards are set in rule, the department could seek to amend the rules to facilitate local government compliance, such as allowing additional alternatives to attending the basic course or increasing the amount of time allowed for an individual to obtain certification. To reduce expenditures without eliminating a basic course, the department could change the length of each class to reduce expenditures per class, and reduce the number of professional courses offered.

Using an alternative funding source for MLEA operations would permit the department to continue operations of the MLEA while reducing or ceasing expenditures from the MLEA state special revenue fund. Examples of possible alternative funding include:

- Work on the HB 577 and HB 261 Business Process Reengineering within the Motor Vehicle Division (MVD) may result in efficiencies which could reduce expenditures within the MVD. Currently, efficiencies have not resulted in an identifiable surplus, due to the participation of

MVD members in HB 261 planning/reengineering functions. This potential may be further recognized later in the 2005 biennium.

- Surplus funding in other divisions within the Department of Justice may be available. The department is funded from various sources, including general fund, state special revenue, and federal special revenue. A preliminary review of HB 2 appropriations, department spending plans, and expenditures to date did not readily identify potential candidates for funding transfers between programs to fund the MLEA. However, if necessary, the department could prioritize programs and transfer funding from lower-priority programs into the MLEA.
- Carry-forward funding – The department has indicated that it may be able to use a portion of approximately \$1.3 million in carry-forward state special revenue authority as a secondary source of funding for the MLEA. Since this carry-forward was originally projected to be used against legislatively-applied vacancy savings, this option could reduce flexibility in other programs during the biennium.
- General fund supplemental – The department could request that the Office of Budget and Program Planning (OBPP) approve a general fund supplemental appropriation for fiscal 2004. This would enable the department to move general fund spending authority from fiscal 2005 into fiscal 2004, but would also require the department to develop a plan to live within the reduced appropriation in fiscal 2005. Given the on-going nature of the structural imbalance in the MLEA fund and the limited flexibility in the department’s 2004 general fund budget, the department may find it a challenge to present a viable plan to stay within the reduced 2005 appropriation.
- Federal Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) funds – In the report given to the December 2003 LFC, the LFD reported that the Governor had committed approximately \$39 million, including \$27 million for fiscal 2004 fire costs, of the \$50 million in JGTRRA funds Montana would receive. The remaining funding, approximately \$11 million, was retained for fiscal 2005 fire costs. However, current LFD estimates place fiscal 2004 fire costs at approximately \$4.6 million higher than the December estimates, which may affect the amount of JGTRRA funds available for fiscal 2005 fire costs. Since the amount reserved for fiscal 2005 fire costs is unspent, it is conceivably available for use elsewhere. The likelihood of JGTRRA funds being used to supplement MLEA funding will depend upon final fiscal 2004 fire costs, projections for fiscal 2005 fire costs, other funding issues within state government, and availability of other options to address the MLEA issue.
- Grant funding – 44-10-202, MCA authorizes the department to accept and expend grants in support of the MLEA. The department has the option to apply for available grants to supplement MLEA funding.

3. Increase revenues into the account.

The department can increase revenues into the account by increasing the fees paid by attendees or by increasing the amount of surcharges levied against case filings.

Currently, fees charged for MLEA courses are not set in statute. Fees for pre-service applicants (those not currently employed by a local government entity and paying for their own training) are set in administrative rule, but fees for the basic and professional course attendees are based on existing policy. Fees for basic course attendees are \$600, and fees for the professional courses are set based on recovering course-specific costs such as speakers’ fees. However, it should be noted that 1-2-116, MCA prohibits the state from requiring local governments to “pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency.” Legislative Branch legal staff have provided an opinion which states that the current fees, by virtue of their long-standing existence and lack of challenge from local governments, may constitute an

agreement which is permissible under 1-12-116, MCA. The legal opinion goes further to state that “If the Department raises the fee, local governments can challenge the raise under the provisions of section 1-2-116, MCA. Eventually, a challenge can become a contested case under the provisions of MAPA [Montana Administrative Procedure Act], with a possibility of appeal to a District Court.” The legal opinion does note that such a challenge may be counterproductive, inasmuch as the local governments need the MLEA to continue operations to provide necessary training, and increased fees may be necessary to continue MLEA operations in the short term.

Neither the Judiciary nor the MLEA surcharge is levied on speeding or seatbelt convictions. The Judiciary surcharge is specifically denied in statute for most speeding convictions, and is not collected on seatbelt usage convictions. The MLEA surcharge is not specifically denied by name in statute. However, based on an opinion provided by Department of Justice legal staff, the department feels that most speeding citations are exempt from collection of the surcharge, and they will not pursue collection on those convictions.

DEPARTMENT PLANS AND LEGISLATIVE FINANCE COMMITTEE INPUT

Currently, the department is working with OBPP on a plan to correct the structural imbalance through a combination that may include some of the options above, or other options not yet mentioned. At the time of this report, that plan had not been presented. The Legislative Finance Committee may wish to ask the department for an updated status on plans to address the MLEA shortfall and provide feedback on those plans or any of the issues described above. The committee may wish to provide input on the effects and desirability of potential actions such as:

- a reduction in the number of MLEA classes,
- an increase in fees charged to attendees,
- a reduction in time and/or qualification standards for law enforcement employment, and
- the collection of surcharges on speeding and seatbelt usage convictions.