

State Employee Settlements: Trends, Transparency, and Administration

PERFORMANCE AUDIT: 18P-04



Settlement Process

- Settlements arise from unique circumstances
- Used to come to an agreement with an employee
- Settlement costs recorded in SABHRS

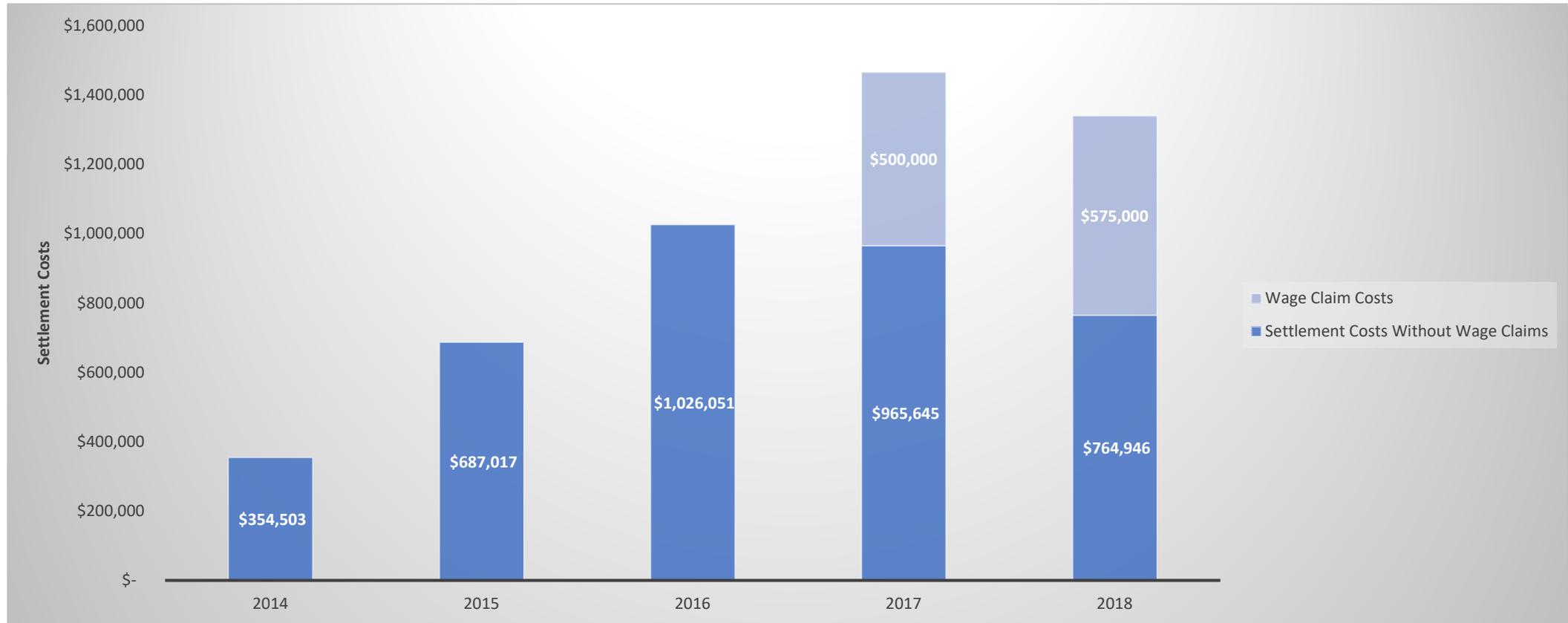
Audit Objectives

- What are settlement trends in the last five years for the executive and judicial branches?
- Do state government agencies have support for entering into settlements?

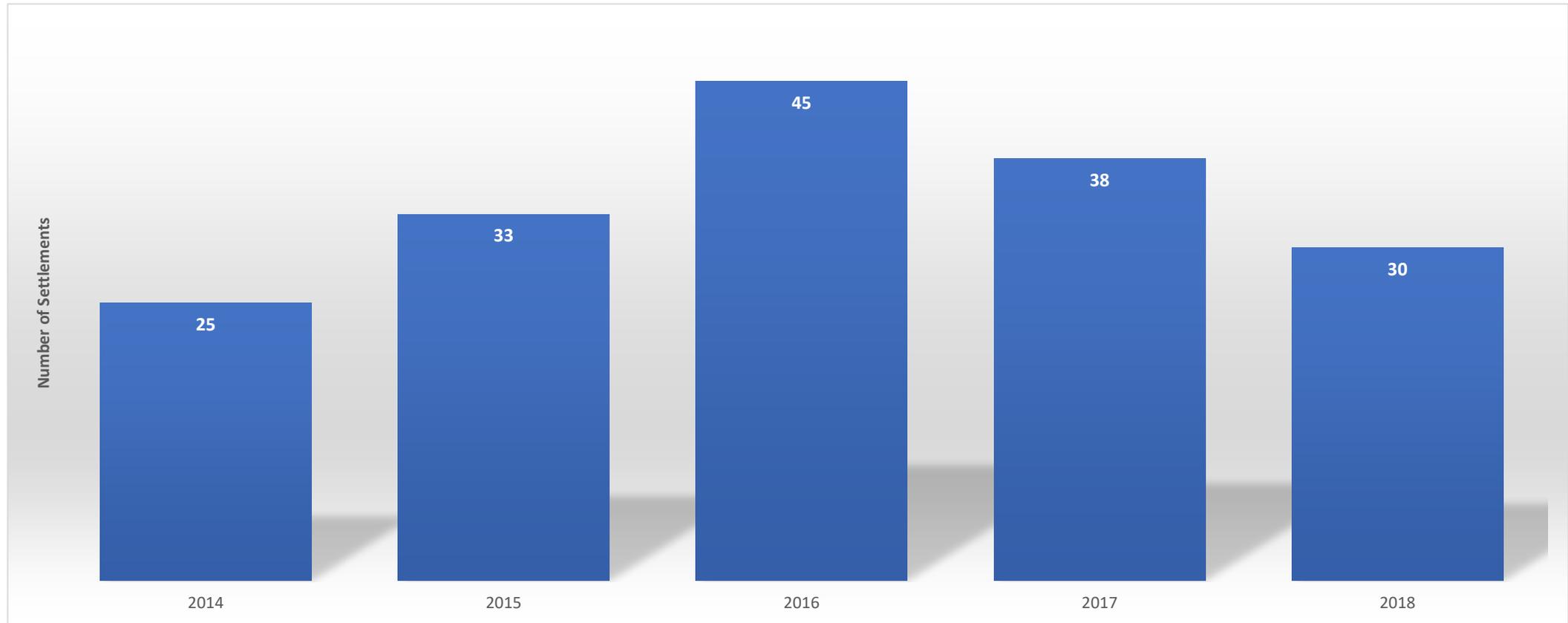
Gathering Settlement Data

- Defined settlements for the audit
- SABHRS settlement data inaccurate
- Executive branch agencies and judicial branch reported settlement activity for FY 2014 through FY 2018
- Took steps to identify any additional settlement data
- Total Settlement costs of just under \$5 million for FY 2014 through FY 2018

Settlement Costs Increased 278%



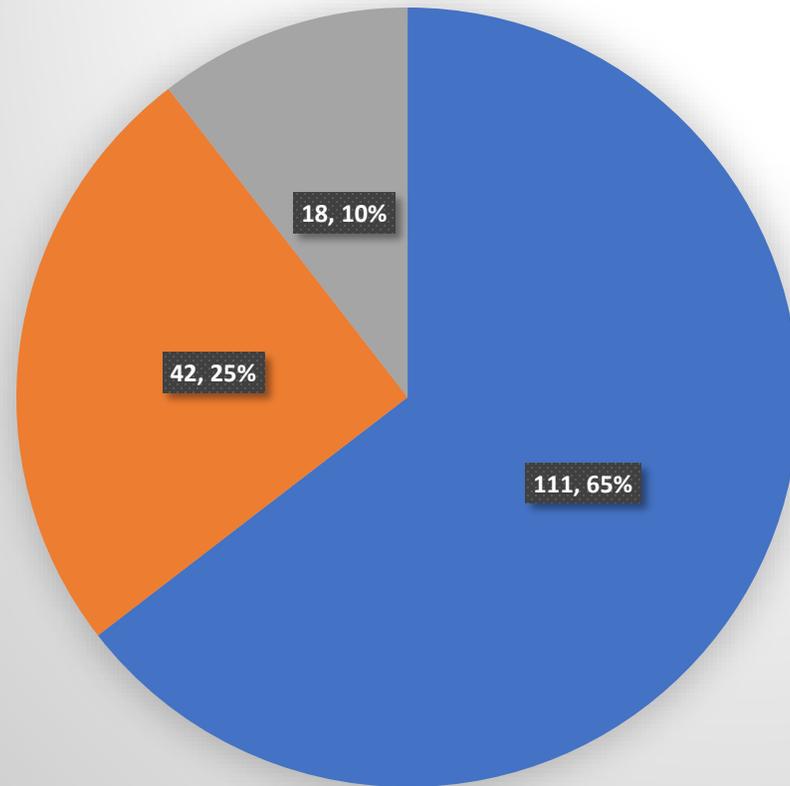
Number of Settlements Peaked in 2016



Settlement Activity by Agency

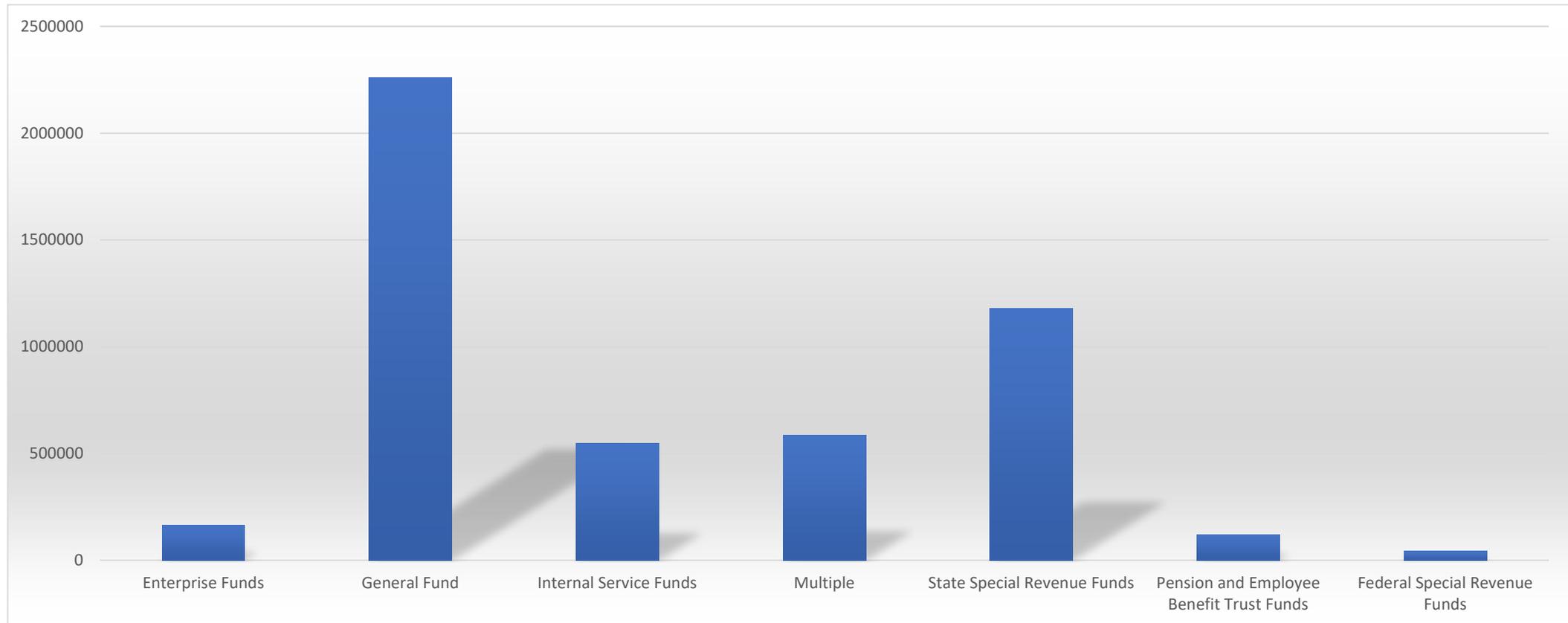
- Number and Cost of settlement varied by size of agency
- Settlements per 100 employee offers comparison between agencies

65% of Settlements Include Non-disclosure/Confidentiality Agreements



- Non-Disclosure/Confidentiality Agreement in Settlement
- No Non-Disclosure/Confidentiality Agreement in Settlement
- Unknown

46% of Settlement Funding From General Fund



Change in Reported Settlement Activity

- Executive Order requires SABHRS and transparency.mt.gov reporting
- FY 2020 settlement data shows 94% decrease from FY 2018
- Governor's Office issued informal policy on settlements
- Conclusion: Inconsistencies in past settlement data show need for greater scrutiny to verify self-reported settlement activity.

No Statutory Settlement Definition or Reporting Requirements

- No statutory settlement definition has contributed to inconsistent settlement data
- Limited reporting structure contributed to data inconsistency
- Other states have statutory definitions of settlements and systems in place for consistent reporting of settlement activity.

Recommendation #1

We recommend the Montana Legislature enact legislation:

- A. Defining what constitutes a state employee settlement and what should be considered when determining the cost of a state employee settlement, and
- B. Requiring reporting of state employee settlements in the State Accounting, Budgeting, and Human Resource System, including defining what information should be reported.

Agency Settlement Process

- Reviewed 38 highest cost settlements. Visited 17 state agencies
- Agencies have little guidance for how to support settlement decisions
- No agency policy and procedure for settlement activity

Settlement Review

- 63% of sample had limited or no support for entering into the settlement
- Agency documentation did not support settlement terms
- Settlement document release language was inconsistent
- Other states provide more guidance

Recommendation #2

We recommend the Governor's Office work with the Department of Administration to develop and implement policy establishing support documentation requirements and minimum standard settlement language that must be used for all state employee settlements.

Non-Disclosure/Confidentiality Terms

- 65% of settlement agreements contained non-disclosure/confidentiality terms
- Non-disclosure/confidentiality terms can perpetuate bad behavior

Settlement Support	Number of Settlements	Number of Settlements with Confidentiality or Non-Disclosure Provisions
Clear Support	14	6
Unclear Support	13	10
No Support	11	11

Open Government

- Montana is constitutionally required to have open government and has well-established right-to-know provisions
- Executive Order says an employee settlement is public information unless individual right to privacy clearly exceeds merits of public disclosure.
- Other states have clear statute requiring settlement documents be open to the public

Recommendation #3

We recommend the Montana Legislature enact legislation requiring agencies to conduct a documented balancing test of the public's right to know and the individual's right to privacy before including a non-disclosure, confidentiality, or similar terms as part of a state employee settlement.

Centralized Review

- Found inconsistency in agency use of fund codes
- Centralized review relates to the previous three recommendations
- Other states use centralized review to provide transparency

Recommendation #4

We recommend the Governor's Office:

- A. Pursue statute to establish and require a centralized review and approval of all state employee settlements, and
- B. Work with the Department of Administration to develop and implement policy establishing centralized review which includes but is not limited to a review of:
 - Funding Source
 - Settlement Terms
 - Support for Settlements
 - Settlement Language