



Economic Affairs Interim Committee
64th Montana Legislature

SENATE MEMBERS
TOM FACEY
RICK RIPLEY
GORDON VANCE
LEA WHITFORD

HOUSE MEMBERS
MIKE LANG
RYAN LYNCH
NATE MCCONNELL
VINCE RICCI

COMMITTEE STAFF
PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
KRISTINA LIMING, Secretary

as of June 9, 2015

Background Information for the SB390 Study of Fees for Licensing Boards

Prepared by Pat Murdo, Research Analyst

Licensed professional and occupational workers account for about one-fifth of Montana's workforce, or an estimated 97,000 members of the 501,000 employed workforce in Montana.¹ Licensing fees may be paid directly by these workers or sometimes by their employers. Some workers are the employers. Fees range from \$100 for a nurse's annual renewal charge to \$1,500 a year for a hearing aid dispenser's annual renewal.

What goes into those costs are factors such as:

- number of licensees sharing the costs;
- number of complaints that require screening panels and adjudication panels;
- a range of fixed expenses that the Department determines and sets; plus
- expenses that a licensing board itself may determine to be appropriate, such as travel to attend national association meetings to keep up-to-date with trends in a profession.

Information provided to the Board of Sanitarians in December 2014 indicated that costs were either fixed, discretionary, or partially discretionary. See Table below for a list of costs by type.

Costs for Licensing Boards by Type of Expense

Fixed expenses	Discretionary Expenses	Partially Discretionary Expenses
Personal services	Per diem for board members	Printing services
Employee benefits	Board member travel	Postage
DLI cost allocation plan ¹	Meeting room expenses	Consulting services
OIT expenses (internal IT) ²		Vehicle expenses
ITSD expenses (state IT)		
Office supplies		
Office equipment		

¹DLI cost allocation plan is the internal service fund for Centralized Services and the Commissioner's Office.

²OIT expenses now are part of the Technical Services Division, which uses an internal fund for billing.

¹The 97,000 number is from the FY 2012 & FY 2013 Professional & Occupational Licensing Report to the Governor's Office of Budget and Program Planning, required under 37-1-106, MCA: <https://dli.mt.gov/Portals/57/Publications/dli-bsd-pol001.pdf>. The employed workforce number is for 2014 and accessed at: <http://www.ourfactsyourfuture.org>.

This study is intended to look primarily at the fixed expenses to determine how the department assesses boards for these costs for the various functions spelled out in the SB 390 study. The SB390 study seeks explanations for the costs of:

- initial and renewal licensing;
- compliance, including inspections and audits;
- legal and enforcement actions; and
- administration not related to specific boards or programs.

The study bill also directs the Economic Affairs Interim Committee to evaluate whether fees for administrative services are commensurate with the costs of services provided and whether the services provided add value to the work of the boards and contribute to public safety. The Committee may decide to request additional information, at its discretion.

As indicated in Appendix B of the Economic Affairs Interim Committee's 2015-2016 work plan, initial information to be provided to the Committee is to include:

- a history of how the Department of Labor and Industry has developed its "fees commensurate with costs" budgets;
- examples from past materials received by the EAIC related to board costs;
- comments related to fee increases from various boards;
- materials presented to the Appropriations/Senate Finance and Claims Committee for use in the budgeting process;
- transfers of appropriation authority within boards; and
- Audit Committee financial reports related to licensing boards. For example, the fiscal compliance audit for the two fiscal years prior to June 30, 2013, found that in 2011-2012 the "fund collected more fees than necessary to cover costs in the fund." The department issued a refund to the various BSD funds and programs that had been charged.

In addition the study plan proposes to provide comparisons:

- with other Montana agencies that staff similar administratively attached boards or councils to determine if costs are equivalent; and
- from other nearby states' licensing boards to provide a regional perspective on Montana licensees' costs as compared with costs in other states.

The basic study required under SB 390 is to include cost information listed for the factors at the top of this page and the determination by the Committee as to whether fees are commensurate with costs and that the services add value to the boards' work and provide for public safety. The Committee may decide to do additional work, depending on where the study propels members.

Proposed schedule

July 15, 2015 meeting	-Background material to review prior to work plan adoption -Questions that Committee members want addressed.
Sept. 15, 2015 meeting	-Presentation by Dept. of Labor and Industry on how board budgets are set and what directives boards get on budgets -Budget analysis of indirect costs assessed by DLI. -Department responses to Committee questions.

- Proposals for alternate approach or support for current way of budgeting.
- Dec. 1 or 2, 2015 meeting -Proposed legislation, if any, to revise how board budgets are set and whether contingency authority is appropriate for particular boards or for the department generally
- Additional meetings -Revisions to legislation, if any.
-Additional data or presentations requested by Committee.

Terms helpful for understanding SB390 Budgeting for Licensing Boards

Administratively Attached Agency

Under 2-15-121, MCA, an "agency allocated to a department for administrative purposes only" has the right to exercise its licensing and policymaking functions "without approval or control of the department." The statute also assigns several duties to the department to which the agency is attached, including directing and supervising the budgeting, recordkeeping, reporting and handling related administrative and clerical functions of the agency. This includes putting the agency's budgetary requests in the department's budget and providing staff for the agency unless a law specifically allows the agency to hire its own personnel.

Administrative Costs

These costs for the most part are indirect costs and recognize that the commissioner of labor and industry and the other staff in her office, including the Central Service budget office, also contribute their services to the board and program functions at BSD. Sometimes these services may be directly billed. The Committee may want a breakdown and analysis of these costs.

Appropriation Authority

Each licensing board and program under the Business Standards Division (BSD) has appropriation authority either under House Bill No. 2 or listed as nonbudgeted proprietary or statutory appropriation. In the 2015 Biennium Budget, the appropriation for the Business Standards Division is \$31,095,613 from state special revenue, which is primarily licensing fees. A small Real Estate Recovery Account had an additional \$448 under a statutory appropriation.

Appropriation Authority is not to be confused with the cash balance in the special revenue account. See Table 2, which shows that although the Board of Medical Examiners spent more than they took in during FY 2014, they had sufficient cash balance and appropriation authority to avoid problems. Some boards have a cash balance but reach a point in the fiscal year where they have no remaining appropriation authority, so they can't spend even if they have a cash balance. See the Board of Optometry in Table 2 as an example of a board that overspent its appropriation authority (but other boards underspent so the division did not run into problems). In the past, the Business Standards Division has tried, at the request of a board, to let boards with cash borrow appropriation authority from another board or program. This was particularly done in the Great Recession when building code permits fell, requiring less work of the Building Codes Bureau, which had appropriation authority to spare but not much cash to spend and not as many inspections to do. The audit for the biennium ending June 30, 2013, noted that for the two fiscal years studied, a majority of boards had fees that were not commensurate with costs

and that "boards have excess fund equity balances." There are legislative questions attached to excess fund equity balances and insufficient appropriation authority, which the SB 390 study is intended to explore. For example:

- Is appropriation authority greater than necessary to enable cash balances for emergencies or to handle a run of complaints?
- Should the general fund pay for certain services because of public safety issues and as a way of minimizing time-consuming budget allocations of department staff services?
- Is the Department's proposal for a contingency fund the best way to avoid "beefing up" appropriation authority, if that is what is happening?
- Should all boards be allowed an enterprise fund or would an enterprise fund without the authority to contract for services be a costly adventure for small licensing boards that operate with a minimal budget?

Budget

The bottom-line budget is the appropriation authority. The Business Standards Division has many different ways of explaining the budget. Explanations that boards have received over time range from the 5-year delineation of expenditures and revenues to a detailed breakdown of services provided by staff for the boxing program.

BSD

Business Standards Division

Commensurate with Costs

SB 79, effective July 1, 2015, removes the term "fees commensurate with costs" and redefines the criteria under which fees are charged. The change addressed an audit contention in the past, but does not necessarily resolve a complaint from boards that contend "costs" ought to be commensurate with "fees", which is to say that some board members have suggested that costs ought to be cut so that licensing fees do not have to be raised. This push-pull budgeting responsibility has rankled many administratively attached boards (particularly small ones) for a long time. The department, which is not paying the fees, set the costs for those who are. Setting the budget always has been considered the department's joint responsibility with boards. Submitting the boards' budgets to the governor's office is one of the tasks under 2-15-121, MCA, which describes departmental interfaces with administratively attached agencies. The boards say that those paying the fees have little ability to control the department's costs.

One example of the uncertainties that arise over setting costs is illustrated by the Table in Appendix B that shows an hourly rate of \$134 for 3 staff people, charged at 8 hours to prepare for a meeting. Hypothetically, this would indicate that the administrative assistant at a salary of \$12/hour, plus an executive officer at \$22/hr and an attorney at \$100/hr all would be spending a cumulative 8 hours preparing for a meeting.

Internal Service Fund

Some units of government charge other units of government for their services. The money is paid into an internal service fund, and may be listed as an indirect or direct cost for those making payments, depending on the type of service. For example, the Technology Service Division may directly charge a board for work on an application related to a board. An example of an indirect charge is for network support services, based on FTE assigned to the board.

Table 2: Board Revenues, Expenditures, Appropriation Authority FY 2014

<i>Board</i>	<i>Revenues</i>	<i>Expenditures</i>	<i>Appropriation Authority</i>	<i>Cash Balance</i>	<i>Meeting days*</i>
Alternative Health Care	\$81,346	\$78,248	\$78,971	\$92,414	6 (5 full bd)
Architects and Landscape Architects**	\$57,868	\$99,174	\$99,919	\$155,178	5 (5 full bd)
	\$29,907	\$23,733	\$23,787	\$71,644	
Athletics Program	\$4,487	\$15,642	\$16,223	\$12,895	not a board
Athletic Trainers	\$26,427	\$14,590	\$15,370	\$54,613	3 (3 full bd)
Barbers/Cosmetologists	\$754,781	\$613,466	\$614,981	\$375,205	7 (3 full bd)
Chemical Dependency Counselors Program	\$113,910	\$137,101	\$137,341	\$53,713	no board until 10/2015
Chiropractors	\$100,593	\$148,996	\$149,993	\$79,240	3 (3 full bd)
Clinical Lab Science Practitioners	\$63,785	\$72,070	\$72,521	\$70,292	4 (3 full bd)
Dentistry	\$221,543	\$286,673	\$286,204	\$30,681	9 (6 full bd)
Electrical Board	\$470,043	\$416,591	\$417,150	\$260,763	6 (2 full bd)
Funeral Service	\$199,833	\$168,121	\$171,195	\$26,371	5 (4 full bd)
Hearing Aid Dispensers	\$79,668	\$33,686	\$34,293	\$86,120	2 (2 full bd)
Massage Therapists	\$180,620	\$194,715	\$195,344	\$84,896	4 (4 full bd)
Medical Examiners	\$1,270,653	\$1,567,189	\$1,657,665	\$1.496 m	25(10 full bd)
Nursing	\$1,369,051	\$953,402	\$954,771	\$2.382 m	11 (2 full bd)
Nursing Home Administrators	\$48,097	\$45,255	\$45,656	\$70,095	4 (3 full bd)
Occupational Therapy Practice	\$67,818	\$77,948	\$78,179	\$60,095	6 (4 full bd)
Optometry	\$38,692	\$50,943	\$49,365	\$33,596	3 (3 full bd)
Outfitters	\$609,928	\$523,063	\$525,322	\$442,228	12 (7 full bd)
Pharmacy	\$1,267,855	\$886,112	\$888,884	\$2.074 m	10 (2 full bd)
Physical Therapy Examiners	\$115,765	\$111,881	\$112,446	\$125,388	6 (5 full bd)
Plumbers	\$315,755	\$311,741	\$312,030	\$118,076	6 (5 full bd)
Private Alternative Adolescent and Outdoor Programs	\$58,298	\$74,961	\$75,574	\$51,606	6 (5 full bd)

<i>Board</i>	<i>Revenues</i>	<i>Expenditures</i>	<i>Appropriation Authority</i>	<i>Cash Balance</i>	<i>Meeting days*</i>
Private Security	\$289,094	\$178,651	\$179,158	\$240,151	4 (4 full bd)
Professional Engineers and Professional Land Surveyors	\$351,072	\$433,660	\$434,400	\$230,660	16 (11 full bd)
Psychologists	\$96,426	\$145,336	\$145,786	\$27,101	9 (7 full bd)
Public Accountants	\$445,503	\$371,188	\$371,060	\$394,565	7 (4 full bd)
Radiologic Technicians	\$83,907	\$97,662	\$98,570	\$33,292	4 (4 full bd)
Real Estate Appraisers	\$450,886	\$440,576	\$442,182	\$223,161	14 (8 full bd)
Realty Regulation	\$1,100,966	\$976,669	\$977,288	\$664,778	26(13 full bd)
Respiratory Care Practitioners	\$48,127	\$40,834	\$41,520	\$76,436	3 (3 full bd)
Sanitarians	\$28,941	\$28,344	\$29,027	\$9,408	5 (5 full bd)
Social Workers and Professional Counselors	\$420,983	\$265,946	\$269,550	\$166,925	8 (5 full bd)
Speech Language Pathologists and Audiologists	\$60,133	\$89,533	\$90,225	\$8,792	6 (5 full bd)
Veterinary Medicine	\$179,134	\$163,081	\$163,330	\$33,410	5 (4 full bd)

*Some 7/1/2013 through 6/30/2014 meeting days were for the full board alone; other meeting days were counted once if there were separate committee or panel meetings on the same day as a board meeting. They were counted separately toward a meeting if they were not held jointly with a full board meeting. The meeting days included conference call meetings as well as in-person meetings..

**The Department budgets these separately although they are part of one board.

Goals of the Committee?

The Economic Affairs Interim Committee is directed by legislation to compile a certain amount of information. A minimal approach to this study would involve providing the required material in advance and providing some give-and-take via a panel discussion involving the Department of Labor and Industry Business Standards Division and budget personnel, Legislative Fiscal Division staff, and certain licensing board members. Public comment would be encouraged.

Additional options:

- More moderate involvement would include analysis of direct and indirect costs in comparison with other agencies with administratively attached boards, if possible.
- The most involvement by the Committee could mean 3-4 meetings in which presentations could explore the items listed above at the first two meetings and a third or fourth meeting could review what is being done that might be omitted, including the associated cost implications related to legal fees, rule adoptions, adjudications or other matters to see if some licensing boards focus on trade control more than public safety.