

STAFF ANALYSIS OF STATUTES GOVERNING MONTANA VETERANS AFFAIRS

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Introduction

The questions before the Subcommittee on Veterans' Affairs are: (1) should the Subcommittee recommend changes to current statutes governing state veterans' affairs; and (2) if so, what changes. This paper presents current statutes in the right-hand column and a bullet summary with staff analysis in the left-hand column.

This paper is not a commentary on the performance of the Board of Veterans Affairs, the MVAD, or the DMA with respect to veterans' services. Rather, it is an academic and dispassionate assessment of how current statutes define powers and duties for implementing veterans' affairs policy.

STAFF SUMMARY

Who is the Board of Veterans' Affairs?

* Board is separately appointed by governor, consent of senate

* Membership criteria: must be from different counties, honorably discharged veteran, "in any of its wars" subject to interpretation, no other criteria

* Compensated like a licensing board

* 5-yr staggered terms

* Allocated to DMA for administrative purposes

What is not in statute:

* No recognition of veteran service organization affiliation

STATUTES

BOARD OF VETERANS' AFFAIRS

2-15-1205. Board of veterans' affairs. (1) There is a **board of veterans' affairs.**

(2) The board consists of **five** members appointed **by the governor** with the **consent of the senate**. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States **in any of its wars**. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall receive compensation and travel expenses as provided for in **37-1-133.**

(4) Each member shall serve for a term of **5 years.**

(5) The board is allocated to the department for **administrative purposes only** as prescribed in 2-15-121. However, **the board may hire its own personnel**, and 2-15-121(2)(d) does not apply.

HISTORICAL EVOLUTION OF THE BOARD

* 1919: Veterans' Welfare Commission created in an appropriation bill and charged to administer the Veterans' Welfare Fund *"for such purposes as in its judgement will best facilitate and promote*

* No specific geographical representation required.

* No minority representation.

What is evidenced in traditional evolution of the Board?

* Commission was granted broad powers and duties to administer and disperse funds for "veterans' welfare"

* Staggered terms of Commission members, intent may have been to separate the Commission from the "politics" of government so it could be free to disperse funds "in any manner whatsoever" for veterans; but double-edged sword when comes to oversight and accountability.

* Commission continued to receive appropriations of salary and expenses, but little policy direction for programs to be administered.

* Finally, created formally as a "department of the state" under the governor

* Various minor changes in name and administrative attachments.

* Edited out over the years was the most specific language, adopted in '30's and 40's, which mentioned defined duties in following specific areas: jobs, education, and physical and mental health

the return of such veterans...to civil life....the Commission may establish employment agencies, furnish employment, provide for institutions of any sort....make grants or loans, or expend such money in any manner whatsoever for such persons...."

Commission to be audited by the Board of Examiners. (Ch. 105, L.1919)

* 1921: Bonus program enacted authorizing \$4.5 million in bonds. Paid \$10 for each month of service up to \$200. Warrants paid from Veterans' Welfare Fund. Tax of 1/2 mill levied to be paid to "Veterans' Compensation Bond Retirement Fund" for paying principle and interest on the bonds. (Ch. 162, L. 1919, passed as ballot initiative in 1920 general election.)

* 1933-1934: Commission had evolved so that veteran benefit claims were paid from the Welfare Fund and filing of claims were facilitated by county officials, but governed by Commission. When Congress enacted federal benefits, the state legislature appropriated money for the salaries and expenses of Commission members and their staff to enable the Commission *"to maintain efficiency and to properly handle the great number of claims for disabled Ex-Service men of Montana for compensation"* (Ch. 25, L.1933-1934 Extraordinary Session)

* 1935-1944: Each appropriation to continue the Commission defined the purpose of "the act". For example, in 1943, the Commission's general fund appropriation was *"for the encouragement, aid and assistance of the men and women returning from service in the present global war; to assist in creating jobs and employment, to provide for the education, training, and comfort, and the physical material and mental well-being of those who have served...."* However, the appropriations were for salary and expenses and did not fund particular programs. (Ch. L. 1943)

* 1945: Commission formally established in statute. The bill "to create a department of the State of Montana to be known as the Veterans' Welfare Commission", defined membership, terms, compensation, and duties. (Ch. 111, L. 1945)

* 1971, Commission's name changed to Board of Veterans' Affairs, transferred to the Department of Social and Rehabilitative Services "for administrative purposes only", but Board retained authority to hire its own personnel. (Ch. 272, L. 1971)

*1981, bill required senate to confirm members appointed by the governor, Board lumped in with regulators and licensing boards that had received sunset reviews by the Legislative Audit Committee (Ch. 247, L. 1981) Also, a bill providing for uniform compensation of licensing and regulatory boards included the Veterans' Affairs Board. (Ch. 474, L. 1981)

*1983, Board moved from SRS attached to DMA "for administrative purposes only". (Ch. 271, L. 1983)

What are the Board's current statutory duties?

* "statewide service", " actively cooperate, "promote the general welfare", leaves a lot subject to interpretation

As an administratively attached agency, what can the Board do (i.e., powers)?

* Exception to normal admin attachments, can hire and fire its own personnel (not exempt from state classification and pay plan, staff numbers limited by budget allocation for personnel services)

* Board may have a separate seal, but in practice, uses DMA's letterhead

* Other agencies supposed to aid and cooperate

* Board can apply for and receive federal grants and contract with federal agencies.

What the Board can't do:

* Employees prohibited from collecting fees for services

* No authority to accept gifts, grants, and donations

* No rule-making authority (so cannot set "policies" as defined by MAPA)

* No independent budget authority, treated like any other division of the department to which it is administratively attached.

*Board first independent "department" under governor, then attached to SRS, now attached to DMA, budget and number of employees has consistently been reduced while number of claims being

10-2-102. Duty of board -- employee qualifications.

(1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, or the Vietnam conflict and must have been honorably discharged. Preference for employment must be given to disabled veterans.

10-2-103. Seal -- acknowledgments -- officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a chairman, a vice-chairman, and a secretary.

10-2-104. Aid by state, county, and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

10-2-106. Acceptance of federal funds. The board may accept from the federal government or any agencies thereof any funds made available to carry out purposes within the scope of the activities and purposes of the board and accept such funds as the board directs.

10-2-107. Contracts for federal reimbursement funds. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the board for any work which the board may do for which any federal statute provides reimbursement to the states.

processed has increased.

What is administrative attachment?

* Board may continue to exercise whatever quasi-judicial, quasi-legislative authority it had. (i.e. rulemaking) but did not have this authority, so still doesn't.

* Board must submit budget request to department director.

* Department sets budget parameters, collects all revenues, and deposits those revenues to accounts.

* Department provides the staff, UNLESS otherwise provided...and it IS... the Board hires its own staff

* Department represents Board in all communications with the governor

Who is the Dept. Military Affairs?

* The Adjutant General (TAG) is department director, appointed Maj. Gen. by governor

* DMA's powers and duties are defined in statute.

* Statutory duties do not mention veterans affairs, but HB 2 provides a line item budget for the "Veterans Affairs Program (31)"

* Appropriation bills can define

2-15-121. Allocation for administrative purposes

only. (1) An **agency** allocated to a department for administrative purposes only in this chapter **shall:**

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The **department** to which an agency is allocated for administrative purposes only in this title **shall:**

(a) direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The **department head** of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

DEPARTMENT OF MILITARY AFFAIRS

2-15-1201. Department of military affairs -- head.

There is a **department of military affairs**. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in 2-15-111. In addition, the adjutant general shall have the qualifications as prescribed in 2-15-1202.

10-1-102. Powers and duties of department of military affairs. Under the direction of the governor, **the department shall:**

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

duties restrict funds

* Separate statute specifies duty to establish cemeteries.

- (2) supervise, administer, and coordinate civil defense and disaster control activities;
- (3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;
- (4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;
- (5) establish and maintain the headquarters required for the militia;
- (6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations. **[staff note: no mention of veterans affairs]**

Who is really responsible for the state veteran cemeteries?

* DMA is responsible for the cemetery program.

* DMA must adopt rules (Board can't).

* Special revenue account to credit of DMA for specific uses (Board has not budget control.)

* DMA authorized to accept donations for cemetery. (Board can't.)

* But, it is the Board and MVAD that, in practice, administers the program.

*How does DMA delegate cemetery administration to the Board? Not sure.

(moving on...).

STATE VETERANS' CEMETERIES

10-2-601. State veterans' cemeteries. The **department of military affairs shall establish state veterans' cemeteries.** A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City.

10-2-602. Rulemaking authority. The department of military affairs shall adopt rules that provide criteria for determining which veterans may be buried in a state veterans' cemetery. The criteria must include but are not limited to discharge status and length of service.

10-2-603. Special revenue account -- use of funds -- solicitation. (1) There is an account in the special revenue fund **to the credit of the department of military affairs** for the state veterans' cemeteries.

(2) Plot allowances and donations must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and **administration** of the state veterans' cemeteries.

(4) The **department of military affairs may solicit veterans' license plate sales** and donations on behalf of the state veterans' cemeteries.

IN PRACTICE:

* DMA adopted rules that provide for the Board to administer the program. ARM 34.5.121 and ARM 34.5.122 (See MVAD packets)

QUESTIONS:

* Do these DMA rules "legislate" something that violates the separation of powers and could be interpreted as an unconstitutional delegation of authority by DMA? Not sure.

* Who should be paying and from what funds for cemetery administration for the time MVAD spends on administering the cemetery program? Topic of recent debate.

* The Board, the MVAD administrator, and all MVAD employees are general fund positions. Money in the cemetery special revenue account "to the credit of DMA" may be spent on "administration".

POTENTIAL CONSEQUENCES:

* DMA could try to use general funds in the Veterans' Affairs Program and theoretically establish its on "veterans' program" by diverting money away from the Board and the MVAD, but using it for the prescribed purposes. Then DMA could try to "back fill" by using cemetery special revenue to fund cemetery administration activities, which is delegated to the Board. How is or could this be done in practice? Is this a real possibility? Not sure.

What are the advisory councils and who determines membership and function?

* Two veteran cemetery advisory councils exist. Staff has not found the authority or documentation governing the composition and function of these councils, except that the statutes governing creation of executive branch advisory councils are sections 2-15-122 and 2-15-123, MCA (in left-hand column)

* MVAD's organizational chart shows these councils as being advisory to the administrator of the MVAD and, by implication, the Board.

QUESTIONS RAISED:

- * How are the advisory council's compensated?
- * How often do the advisory council's meet?
- * Did the governor approve the appointments of the advisory council's?
- * What is the criteria for membership of the advisory councils and what are their function and purpose?

CEMETERY ADVISORY COUNCILS

2-15-122. Creation of advisory councils. (1) (a) A **department head or the governor** may create advisory councils.

(b) An **agency** or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but **only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.**

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the "... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102.

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, **each member is entitled to be paid in an amount to be determined by the department head, not to exceed \$25 for each day** in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be

reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, **each advisory council shall meet at least annually** and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, **an advisory council may not be created or appointed by a department head or any other official without the approval of the governor.** In order for the creation or approval of the creation of an advisory council to be effective, **the governor must file** in his office and in the office of the secretary of state **a record of the council created showing the council's:**

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, **unless extended by the governor** or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

2-15-123. Administratively created agencies -- prohibition. The governor, a department head, or any other official of the executive branch of state government or an agency **may not, by administrative action,** create or attempt to **create an agency of state government.** This section does not apply to:

(1) advisory councils created in accordance with 2-15-122;

(2) units within the internal structure of a department established under 2-15-112(1)(g).

Speaking of advisory councils

...

* When General Prendergast established the Veterans' Resource Coalition last interim, did that constitute an advisory council? Not sure.

* If VRC should be continued, would it have to be by statute? Not sure.

* If DMA were given the express duty and power to create the VRC, what would be its relationship to the Board of Veterans' Affairs? Not sure.

Staff analysis to this point:

* Disconnects between statute and practice are creating a tangle of relationships making administration of veterans'

programs problematic.

* The legislature could fix this by filling in the statutory gaps about who is the lead agency for veterans affairs and being specific about what are the powers and duties of the board, the MVAD, and DMA, regarding veterans' services.

What is DPHHS's role?

* Responsible for the two state veterans' nursing homes

* No other statutory obligation to pay special attention to veterans or coordinate with other veterans service providers

PUBLIC HEALTH AND HUMAN SERVICES

53-1-601. Purpose of department of public health and human services. The **department of public health and human services** shall use to maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the fields of:

- (a) mental health; and
- (b) chemical dependency;

(2) provide, according to the requirements of Title 53, chapter 20, inpatient institutional care for persons with developmental disabilities who require institutional care; and

(3) **provide nursing home care for honorably discharged veterans as provided by law.**

53-1-602. Department of public health and human services. (1) The following components are in the **department of public health and human services** to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

- (i) the Montana state hospital;
- (ii) the Montana mental health nursing care center; and
- (iii) a community services component, consisting of

appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(b) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(c) institutional and residential components of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which components consist of:

- (i) the Montana developmental center; and
- (ii) the Eastmont human services center; and

(d) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

- (i) the Montana veterans' home; and**
- (ii) the eastern Montana veterans' home at Glendive.**

(2) A state institution may not be moved, discontinued,

or abandoned without the consent of the legislature.

10-2-401. Location and function of homes -- persons admitted. The institutions at Columbia Falls and in eastern Montana are the Montana veterans' homes, and **their primary function is to provide a home and subsistence for veterans.** The department of public health and human services may also admit spouses or surviving spouses of veterans to the homes if space allows.

STAFF ANALYSIS AND CONCLUSION

- ? Current statutes governing veterans' affairs set up a tangle of relationships between the Board of Veterans Affairs, the Department of Military Affairs, and who is accountable to who for what.
- ? Tangled relationships mean that the responsibilities are unclear, lines of communication conflict, and accountability is problematic.
- ? To untangle these structural relationships, improve accountability, clarify lines of communication, and establish a responsive organizational structure, the Subcommittee needs to clarify in legislation:

? ***Who is the lead agency for veterans affairs?***

? ***What are its powers and duties?***

? ***To whom is the agency accountable?***

? ***How should the agency be accountable in practical terms?***

? ***How should***

APPENDIX A

Issues and Options Paper #1

Introduction

The following list of options is as far as committee staff was able to get with the Issues and Options Paper #1. However, this list represents a more complete listing of options than the handful attached to the draft agenda. There is also a list of issues and options presented in the staff survey. All three of these lists offer tools to assist the Subcommittee's executive session. The Subcommittee decide to use any of them , all of them, or none of them as a guide for making motions and taking action. However, it is important that the Subcommittee take some action at this meeting to move forward. For example, motions could instruct staff to prepare a bill draft to do certain things and to make that bill draft available for further consideration and amendment at the next meeting. Bill drafts also help frame the fiscal questions.

Options

Options range from doing small amendments here and there as a "tune up" of current statutes to drafting legislation that provides for a complete "overhaul" of the organization and structure of veterans' services.

A. The "tune up" of current statutes could include:

- ? List the duties and responsibilities of the Board of Veterans Affairs in statute (could list what Board currently does, i.e., benefit claims, or add more specifics, such as outreach, coordination, advocacy, homeless services, applying for federal grants, etc.)
- ? Specify in statute that the veterans' cemetery program should be administered under the Board of Veterans' Affairs.
- ? Authorize the Board to appoint advisory councils (such as the cemetery advisory councils) and specify purpose and functions and perhaps membership.

B. Add parts, such as:

- ? Direct the Board to do certain things: for example, publish a service directory, establish a comprehensive web site, provide an annual report to certain entities and containing certain information, establish a grant-writing program, etc.
- ? Add additional "players", such as a homeless coordinator, a grant writer or coordinator to provide technical assistance to local public or private non-profit grant applicants, an ombudsman, or an outreach and communications director
- ? Add veteran representation to existing programs, coordinating councils, advisory councils, offices and programs, such as to the mental health ombudsman office, to the interagency coordinating council, the mental health planning and advisory council, the Indian affairs coordinator's office, etc.

- ? Add more state-funded VSOs and/or expand their duties to encompass more than filing claims, enumerate what those duties should be.
- ? Create a state reimbursement or matching funds program for county-level and/or service organization-level VSOs, outreach coordinators, homeless coordinators, mental health counselors, intensive case managers, etc.
- ? Authorize the Board to accept gifts grants and donations for certain purposes
- ? Add specific powers and duties to existing departments, such as the DPHHS and DOL to provide veterans' programs
- ? Put state-VSOs in county public assistance offices instead of in National Guard armories or in VA facilities.

C. Clarify who should drive the current car, but don't completely overhaul the car:

- ? Make the Board of Veterans' Affairs the "lead agency" for veterans' affairs. Establish the MVAD in statute and provide that budget appropriations to DMA for the "Veterans' Affairs Program" may only be spent for purposes specified by the Board.

Pros: Elevates the role of the Board, gives it more control in matters of policy and budgeting for directing veterans' affairs.

Cons: Committee staff has not found a president for doing this. In fact, the movement has been to sunset boards and commissions. Also, this option would effectively prohibit DMA from using those funds to establish a local veterans' resource coalition, for example, or for General Prendergast to use that money to fund quarterly meetings with tribes on veterans' issues. *Please note: Staff does not know how DMA funded the VRC or is funding recent initiatives related to meetings with tribes to discuss tribal veteran representatives. DMA could have funded these activities with other money not specifically allocated to the Veterans' Affairs Program in HB 2 or with other funds.)*

- ? Make DMA the lead agency for veterans' affairs, so that MVAD staff (VSOs and cemetery sexton's, etc.) are directly hired and supervised by DMA, convert the Board to an advisory council.

Pros: Gives clear authority and responsibility to the department director, who is accountable to the governor. Division administrator and division staff would be supervised by the department, not by a Board that meets three times a year.

Cons: The director of the National Guard does not have to be veteran. DMA has Homeland Security and National Defense missions. The work of VSOs is unlike any other work currently done in DMA.

D. Consider an overhaul:

- ? Make Veterans' Affairs its own program within the governor's office so it is directly supervised by and accountable to the governor, but without the full status of a department. Convert the Board to an advisory council.
- ? Make Veterans' Affairs an actual Department...the MVAD would essentially become the State Department of Veterans' Affairs and the MVAD administrator would become a department director appointed by the governor. Convert the Board to an advisory council.
- ? Elevate the Board to a level similar to the PSC, and give it the authority of a department director, making the Board's staff a "department", similar to the Department of Public Service Regulation.

Note: The Montana Constitution limits the number of departments to 20. We currently have 16.

Funding

Potential funding sources include:

- ? General fund
- ? License plate fees (fees on purchase of special plates, increase current fees paid by veterans, add fee to cost of all plates)
- ? Cigarette tax
- ? Tobacco settlement
- ? Issue bonds (as used to start the Veterans' Welfare Fund)
- ? New tax or fee

Other options or ideas?