

2025 BIENNIUM BUDGET RECOMMENDATIONS

1) Budget Starting Point

- a. Recommend that the appropriation subcommittees adopt the 2023 base as submitted by the executive as the starting point for budget deliberations.
 - i. Includes allocations to tie to legislative intent (e.g. funding from other bills in previous session, added to HB 2 for this session)
 - ii. Does not include the statewide present law adjustments for personal services, statewide fixed costs, and inflation/deflation
 - iii. One-time-only appropriations are excluded from the starting point

History

In preparation for the 2015 Legislative session the executive prepared the budget request using the 2014 actual expenditures and the legislature adopted the 2015 appropriation as the starting point, which required recalculation of decision packages to balance budget requests.

Discussion

During the 2017 biennium interim, the executive and the Legislative Finance Committee agreed to use the FY 2017 base budget as the starting point for the 2019 biennium budget process.

The adoption of the base as the starting point does not prevent a subcommittee, the full committees, or the legislature from reducing the budget later in the process.

Process

Requires a motion by the subcommittees to adopt the 2021 base as the starting point.

2) SWPL: Personal Services

- a. Recommend subcommittees consider the statewide present law (SWPL) personal services adjustments in light of the following:
 - i. Statutory like changes included in the LFD calculated comparison
 - ii. Changes associated with agency actions that impact salaries
 - iii. Consider executive instructions to agencies

Molly DelCurto's report to the LFC in June re: Personal Services and the LFD plan for session can be found [here](#).

During the 2015 Legislature, a statewide reduction to personal services of 2% was included for all agencies, and referenced in HB 2 as legislative intent that this fully funds current salaries and imposes a 2% vacancy savings. The 2017 Legislature instituted a 6% vacancy savings for the 2019 biennium, except where those agencies were exempted from vacancy savings.

Individual appropriations subcommittee will be provided the opportunity to examine the changes in personal services as related to the items in column one and have a discussion regarding management decisions. Subcommittees may develop alternative plans to providing authority for the personal services adjustment.

The LFD is preparing tables and communicating with agencies to prepare an explanation of the Personal Services management decisions impacting the Statewide Present Law adjustment. These tables will be included in the Budget Analysis.

LFD has been developing and sharing additional personal services analysis with the IBCs throughout the interim and will provide information to the 2023 Legislature.

These adjustments are all presented in IBARS in DP 1-0-SWPL-Personal Services.

3) SWPL: Fixed Costs

- a. Recommend the Section A and Section C subcommittees examine fixed cost rates and provide directions regarding the acceptance of the rates to the other subcommittees. Any adjustments should be made on a consistent basis.
- b.

Since the 2013 Legislative session, the fixed cost adjustment has been presented in a decision package. The Section A subcommittee examined most of the rates and provided directions to the other subcommittees for adjustments.

This decision does not preclude the Section A subcommittee from increasing or decreasing a fixed cost rate. If such change occurs, these types of adjustments would occur as change packages in all agency budgets. Subcommittees should not reduce budgeted fixed costs unless directed to do so by the Section A subcommittee.

The fixed costs will be considered in Section A (General Government) along with the budget of the Dept. of Administration.

Motor Pool rates will be set in Section C through the Dept. of Transportation.

ITSD rates will be described and set through Volume 10.

These adjustments are all presented in IBARS in DP 2-0-SWPL-Fixed Costs.

4) SWPL: Inflation

- a. Direct the Section A subcommittee to examine the inflation/deflation factors and provide directions to the other subcommittees. Any adjustments shall be made on a consistent basis.
- b.

The [2025 Biennium General Fund Outlook](#) provides some potential measures against which budget growth might be benchmarked, including CPI, Montana average wages, population growth, personal income growth, etc.

Since the 2013 Legislative session, the inflation/deflation adjustment has been presented in a decision package.

This decision does not prevent the Section A subcommittee from increasing or decreasing inflation factors. If such change occurs, these types of adjustments would occur as change packages in all agency budgets. Subcommittees should not reduce budgeted fixed costs unless directed to do so by the Section A subcommittee.

These adjustments are all presented in IBARS in DP 3-0-SWPL-Inflation Deflation.

5) Budget Proposals Requiring Legislation

- a. Direct the appropriation subcommittees to make no recommendations or adjustments to HB 2 until required legislation passes, except for K-12 inflation which is defined as present law, and in alinement with companion bills.
- b.

Coordination of the contingent legislation is often completed in conference committee.

Legislation is often accompanied by fiscal notes, but not all fiscal notes need to be incorporated into HB 2. Deliberations in policy committees may influence some modifications to HB 2 to account for situations where an adjustment in funding is necessary to implement legislation.

6) HB 2 Companion Bill

- a. Recommend the appropriation subcommittees determine any appropriate items for inclusion into a HB 2 companion bill and provide those items to the full House Appropriations Committee for further review. If needed, recommend that appropriations committee leadership request legislation to provide a vehicle or vehicles for enacting substantive language related to the implementation of appropriations in HB 2 and the legislation will be considered as part of the appropriations process.
- b.

Julie Johnson has written a memo regarding the use of companion bills, for the subcommittee's review.

This was included in the items discussed and adopted since the 2009 session. The companion bill should follow HB 2 as closely possible.

Legislation to implement HB 2 is purposeful by providing a vehicle for the legislature to enact provisions related to appropriations that are not appropriate for inclusion in HB 2. This is commonly referred to as the companion bill to HB 2.

Among the potential uses are to:

- Provide statutory changes necessary to implement provisions of the budget
- Provide special instructions on use of or access to appropriations
- Require agency action

LFD analysts would assist subcommittees to complete this task. If no bill is currently available, a bill draft request is necessary to complete this action.



To: LFC Budget Process Recommendations Subcommittee
From: Julie Johnson, LSD Staff Attorney
Re: Companion Bills and Legal Considerations
Date: July 13, 2022

Companion Bills

I. Purpose of a Companion Bill

Section 17-8-103(2), MCA, provides: "In no event does a condition or limitation contained in an appropriation act amend any other statute".

Consequently, House Bill No. 2 may not expressly or by implication, amend, supplant, or conflict with substantive law. Therefore, if the Legislature proposes funding in HB 2 that conflicts with statute, the statute must be amended in a separate bill, not in HB 2. HB 2 and Montana Code Annotated must be in harmony. Bills that amend statutes to coordinate with House Bill No. 2 are commonly referred to as companion bills.

For example, suppose there is a statute in the Montana Code Annotated that governs the allocations of a certain state special revenue fund. The statute provides that one agency is allocated 25% of funds in the account for a program, and another agency is allocated the remaining 75% of the funds for a different program.

During session, if House Bill No. 2 is drafted and passed to provide that the agencies instead *equally split* funding from that state special revenue fund, a companion bill must also pass to amend that statute to provide for equal funding instead of a 25/75 split. The companion bill will harmonize the allocation statute with the HB 2's allocation of the fund.

Companion bills are not intended for wholesale modifications of law that are loosely tied to the biennial budget bill.

II. Legal Considerations in Drafting Companion Bills

Recently, each section of the joint subcommittees has had its own companion bill. The reason for having more than one companion bill is based on constitutional considerations.

Article V, section 11(3) of the Montana Constitution¹ provides:

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void. (Emphasis added).

The purpose of the section to put the public on notice about the subjects being addressed in a bill and the Montana Supreme Court has declared laws void for violating this section of the Constitution. For example, in State ex rel. Sanders v. Butte, 151 Mont. 171, 441 P.2d 190 (1968), the Montana Supreme Court held that a statute which provided for penalty assessment on forfeited bail and on fines was void as a violation of this section.

The Supreme Court has explained that the "purpose of requiring singleness of subject is to prevent the practice of embracing in the same bill incongruous matters which have no relation to each other or to the subject specified in the title, so that measures may not be adopted without attracting attention to them." Rosebud County v. Flinn, 109 Mont. 537, 543-44, 98 P.2d 330, 334 (1940); Montana Auto. Ass'n v. Greely, 193 Mont. 378, 398, 632 P.2d 300, 311 (1981). The Court has also stated that "the test under this provision of the Montana Constitution is simply whether the title is of such character as to mislead the public as to the subjects embraced." Id.

The concern about overloading companion bills has been addressed before. In fact, in 2019, SB 95 was introduced and intended as a companion bill. The bill amended nearly 20 unrelated statutes. Legal Services authored a Legal Review Note on the introduced version of Senate Bill No. 95 stating:

LC0907 (SB 95) may potentially be in conflict with Article V, section 11(3), given that the draft bill covers such a wide range of subjects. Although each proposed amendment to current law in the bill is designed to implement House Bill No. 2, the bill raises potential conformity issues with the requirement of Article 5, section 11(3) given the range of laws being amended.

¹ Art. V, sec. 11(3), Mont. Const., is nearly identical to Article V, section 23, of Montana's 1889 Constitution.

Given the concerns outlined in the Legal Review Note, the Legislature amended the introduced version of SB 95 and final bill that passed provided for a single transfer of funds and no amended code sections of law.

In reviewing companion bills from the most recent sessions, it appears that the depth and breadth of the topics and issues contained in a single companion bill has expanded significantly. This expansion could subject a bill to legal challenge for violating Article V, section 11(3).

Therefore, this subcommittee may wish to issue recommendations to the joint subcommittees that companion bills be tailored as narrowly as possible to comply with the single subject provision of the Constitution to allow the public adequate notice about the subjects being addressed in the bill. The subcommittee may also consider recommending that language in companion bills have a direct and concrete link to the most current version of HB 2. These recommendations may reduce the potential for a successful legal challenge to a companion bill in the future.

7) Key Performance Measures

- a. Recommend to the joint appropriation subcommittees to select a few critical performance measures for each agency for monitoring purposes during the 2023 interim and formalized as part of a separate bill(s) or resolution(s).
- b.

[MCA 17-7-111\(3\)\(c\)](#)

From the EPP Budget Instructions Memo:

H. Agency Goals and Objectives

OBPP and Governor’s Office policy staff will work with agencies throughout the budget development process to develop and/or revise agency goals and objectives for consistency with Governor Gianforte’s vision and direction. Refer to Budget Memo 3 as well as available recording training materials.

See attached: Memo 4 “Agency Goals & Objectives – 2025 Biennium” from Budget Director

-*Note:* submittal date of September 1, 2022 for agencies to provide to OBPP

This process has evolved over the past several biennia. The 2011 Legislature passed SJR 26 and the LFC monitored programs identified in the legislation during the 2013 interim. The same process was utilized in the 2013 session, however the bill died in process.

If this was considered a valuable task, a recommendation to the joint committees would include the selection of performance measures for review during the 2023 interim.

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. Reviewing this information and selecting related performance measures for further review may demonstrate to the legislature where budgetary adjustments are warranted and where the legislature might direct resources accordingly.

LFD analysts would assist subcommittees to complete this task by incorporating it into the budget hearing process.

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA



GREG GIANFORTE
GOVERNOR

PO Box 200802
HELENA, MONTANA 59620-0802

Memo 4
0 attachments

DATE: March 8, 2022

TO: Elected Officials
Department Directors
Centralized Services Administrators

FROM: Ryan Osmundson, Budget Director
Office of Budget and Program Planning

SUBJECT: **Agency Goals and Objectives – 2025 Biennium**

17-7-111(3)(c), MCA, states:

“The agency budget request must set forth . . .
a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.”

The statement of goals and objectives for each program of the agency, required by the statute above, must be submitted to the Budget Director, as part of its budget request, by September 1, 2022.

In order to bring some consistency to this effort across and within Executive Branch agencies, I offer some guidance that I hope you will find useful. Agencies should consider the goals and objectives developed as part of the 2023 Biennium Executive Budget as they develop their goals and objectives for the 2025 Biennium. As mentioned above, goals and objectives should be concise but contains enough specific and quantifiable information for the legislature to attain progress towards meeting goals and objectives. Goals and objectives should incorporate the principles of the Gianforte Administration:

1. Continue to create more high-paying jobs
2. Reduce regulations in state government (Red Tape Relief Initiative)
3. Improve customer service, accountability, & efficiency
4. Bring the State of Montana’s technology into the 21st century

Training on developing strategic goals and objectives will be conducted the week of March 21 – more details will be forthcoming. Once goals and objectives have been drafted, discussions on Executive Branch goals and objectives should occur between the Governor’s Office policy staff, OBPP staff, and agency staff prior to the submittal date of **September 1**.

8) Internal Service Programs

- a. Recommend to the appropriation subcommittees not to approve decision packages of internal service funded proprietary programs unless quantifiable rate impact information is provided.
- b.

This recommendation has been adopted since the 2009 session.

"Internal service funded proprietary programs" refer to state programs that provide services to other state programs for fees based upon rates approved by the legislature. Budget instructions direct agencies to provide quantifiable rate impact information when submitting requests for rate changes.

LFD analysts would assist subcommittees to complete this task by incorporating this task into the budget hearing process.

9) One-Time-Only Alternative Designation

- a. Recommend the appropriation subcommittees not designate entire agency budget requests as “one time only” (OTO). Please use the language written in the far right column to request an agency to provide a complete description of the budget for the subsequent legislative session.
- b.

During the 2015 Legislature, two agencies had almost their entire budget designated OTO as a way of indicating the entire budget was to be carefully reviewed in the coming biennium.

During the 2017 Legislature, the current language approach was used to maintain a base, but put the agency on notice that the subcommittee would be considering the entire budget, and requesting detailed information.

LFD and OBPP have agreed in principal that the language approach results in a consistent IBARS approach for all agencies, and that the full consideration of complete budgets would be provided through Excel, allowing the subcommittee to make targeted adjustments through DPs in IBARS as necessary.

Alternate language for subcommittees to utilize: “It is the intent of the legislature to consider the 2025 biennium budget for the department of ___ from zero to the full recommended budget. The department shall explain the necessity of each reporting level (RL4) of the budget, including the base budget for the budget submission for the 2025 biennium budget.”

10) Volume 10

- a. Information technology budget process recommendations.
- b. Each subcommittee should consider the comparisons in volume 10 when adopting the IT budget for each agency.
- c. Section A subcommittee should review format of volume 10 and make recommendations for the next session.

[MCA 17-7-111](#)(3)(g) indicates:

(3)... The plan must consist of:

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in [2-17-523](#).

[MCA 2-17-523](#) (3) indicates:

(3) New investments in information technology can be included in the governor's budget only if the project is contained in the approved agency information technology plan.

During the 2015 Legislature, a subcommittee on IT budgeting was appointed to examine the overall costs of IT included in agency budgets and the relationship between services provided by the State Information Technology Services Division (SITSD) and other IT costs.

For the 2017 Session, the executive proposed boilerplate language for HB 2 to establish a separate appropriation for SITSD fixed costs and designate them as restricted.

The executive developed Volume 10 to outline the state's IT costs. SITSD costs, state agency costs, and any long-term IT projects are outlined in the document. FY 2020 actual expenditures are used as the baseline in determining estimated budget amounts for FY 2021, 2022, and 2023.

LFD analysts would assist subcommittees in examining the IT budgeted costs as estimated in Volume 10. Legislative decisions on the appropriations for state agency IT costs would be determined by each subcommittee.

Examination of the SITSD rate structure is under the purview of the Section A subcommittee. Section A subcommittee decisions on the appropriations for this program would be incorporated into the fixed cost decision package included in each state agency budget in the first weeks of the session.

11) Subcommittee Hearings Process

- a. Recommend that subcommittees consider consistent rules regarding materials and presentations from agencies.

In the 2017 legislature, at least one subcommittee required agencies to submit reports and materials three (3) committee days in advance of their presentation. This allowed committee members to review materials in advance and allow for a more informed conversation.

During the 2019 Biennium interim, multiple different legislators from different subcommittees asked if the LFC might include guidance or recommendations on this, encouraging this approach in other subcommittees.

Subcommittees would ultimately decide their own process, but direction from the LFC would allow for a more uniform application based on the direction provided.

12) Other or Biennium Specific Items

- a. Dynamic Fiscal Notes or Alternate Fiscal Analysis
- b.

Susie's [March LFC Report](#)

13) Questions to include in OBPP Instructions to Agencies for budget development

- a. Personal Services questions
- b. Public Right to Know (as suggested by a legislator)
 - i. How much time and money does each agency spend on public right to know requests?
 - ii. How much revenue do agencies collect from entities requesting public right to know information?