

A REVIEW OF THE PROCESS FOR HANDLING GLOBAL FISCAL ISSUES RELATIVE TO THE BUDGET PROCESS

A Report Prepared for the
Budget and Appropriations Process Subcommittee
of the Legislative Finance Committee

By
Jon Moe
Fiscal Specialist

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Legislative Fiscal Division



www.leg.mt.gov/ess/fiscal

PURPOSE

A structure for the executive budget proposals is generally specified in statute. This defined structure is the backbone of a process that involves months of preparation by executive and legislative staff, and months of legislative deliberation. It is the defined structure that allows for a sophisticated level of automation but which also dictates a need for consistency among groups of decision makers. It is the issues of consistency and equity that drive the need for a global issue decision process.

The purpose of this report is to remind members of the importance of consistency and equity in the deliberation of most, if not all, agency budgets, and to determine the best way of establishing guidelines for the legislative budget process that will best serve the needs of the legislature for an orderly and logical deliberation, resulting in consistent and equitable decisions. Because the legislative budget process employs five appropriations subcommittees reviewing the same components of different agency budgets, a common approach to addressing certain overarching issues is desirable. With global decisions in hand, the subcommittees can proceed with their individual budget reviews knowing that there is equity and consistency in key decisions regarding those overarching issues of the total budget.

The question at hand deals with how the recommendations of the Legislative Finance Committee (LFC), as required by statute, should be presented to the House Appropriations Committee and the Senate Finance and Claims Committee. For many years, these recommendations, which the LFC has developed at its November meeting preceding the regular session, have been presented at a joint meeting of the two appropriations committees in the first couple of days of the session. The joint committees have adopted those recommended guidelines, only occasionally taking a different direction than recommended by the LFC. Once decided, the global recommendations become guidelines for the appropriation subcommittees that meet on the budget for the first several weeks of the session. However, the global issues recommendations of the LFC could be handled in at least a few ways:

- Stay with the process of taking the global issues recommendations to a the joint meeting of the two appropriations committees
- Provide the recommendations to the chairperson of the respective appropriations committees for distribution to each subcommittee.
- Put a few items that have traditionally been handled through this process in statute since there are really no alternatives to consider

The following provide some background discussion and an analysis of the options for presenting the global issue recommendations for the appropriations committees and subcommittees.

BACKGROUND

The statutes that most directly relate to the budget process and structure are attached. Those statutes are in Title 17, Chapter 7, part 1, MCA. They are attached for reference purposes. In addition, the following paragraph discusses a role of the Legislative Finance Committee which is also part of this discussion. The entire Title 5, Chapter 12, MCA is also attached for reference purposes.

A bill passed by the 1997 Legislature revised 5-12-205, MCA (powers and duties of the Legislative Finance Committee) to require that the LFC make recommendations to appropriations committee leadership prior to each session on global budget issues. The statute is as follows:

5-12-205 (7) [The Legislative Finance Committee] shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may

also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law.

There are a number of issues that should be considered by the legislature in a global manner, rather than by individual appropriations subcommittees. They fall into three general categories:

- Those where some consistency of action is desirable, such as the application of vacancy savings and inflation rates
- Those decisions where required payments are established by previous legislative action, such as application of legislatively authorized pay plan levels
- Those where the budgets of the individual agencies are driven by budgets established centrally, such as the fixed costs used to fund programs like the Information Technology Services Division (ITSD) and central purchasing, and where the agency paying the cost has no flexibility in whether or at what level the charges will be paid

In past sessions, these issues have been decided and taken the form of recommendations by the Legislative Finance Committee to a joint meeting of the House Appropriations Committee and the Senate Finance and Claims Committee. The consensus of the two committees was then passed on to the five joint appropriations subcommittees (sections A through E) with the purpose of attempting to maintain consistency on certain aspects of the budget among the committees reviewing their respective portions of the whole budget. As a reminder of past global issues, the items usually considered under this process, and the most recent recommendation of the committee to the joint appropriations committees, have been:

The starting point for subcommittee deliberations - Direct the subcommittees to adopt the base budget and the statewide present law adjustments as the starting point of budget deliberations for each agency.

The method for making changes to FTE funding - Specify the actual FTE, and allow the legislative budgeting system to calculate the total addition or reduction in funding for that specific FTE. This option is preferred as it lets the budgeting system do the work.

Application of vacancy savings factor in agency budgets - The full appropriations committees shall adopt a global recommended level of personal services reductions (vacancy savings). Subcommittees will be requested to adopt the recommended level as part of their budget recommendation.

Application of fixed cost rates in agency budgets - Direct subcommittees to consistently apply fixed costs in agency budgets as included by the executive budget request. Adjustments to fixed cost rates shall be determined by the subcommittee examining the service provider (e.g., ITSD costs as reviewed by the General Government Subcommittee) and shall be globally adjusted on a consistent basis.

Application of inflation/deflation rates (if any) in agency budgets - If the full committee wishes to vary from the executive budget proposal inflation/deflation factors, it should establish approved inflation/deflation rates (if any) by individual object of expenditure and direct subcommittees to apply these rates to all budget adjustment recommendations.

When to include the cost of proposed legislation in HB 2 – The subcommittees should make no recommendations of adjustments to HB 2 until the required legislation passes.

Avoid occurrence of “negative” line items in HB 2 - Appropriations committee leadership shall direct the appropriations subcommittees to include negative new proposals in the present law line item in the budget, as opposed to a separate negative line item appropriation.

There have been other issues that the Legislative Finance Committee has considered but they vary from session to session.

ANALYSIS

Again, the purpose here is to discuss how the recommendations of the Legislative Finance Committee regarding the “global issues” should be provided to the legislature as provided in 5-12-205(7), MCA. Three options are mentioned above. The goal in each instance is to reach consensus on how all appropriation subcommittees and the two full committees handle certain aspects of the budget throughout the budget deliberation process. The following is a discussion of each option:

RETAIN THE CURRENT PROCESS

The current process involves the presentation of the recommendations to a joint meeting of the House Appropriations Committee (HAC) and the Senate Finance and Claims Committee (SFC). The HAC chairperson presides over this meeting. Typically, Legislative Fiscal Division staff present each recommendation, the joint committee discusses the recommendation, and each committee votes separately on each recommendation.

Pros: Discussions in joint committee include all appropriations subcommittee members

Cons: A cumbersome meeting size as it includes up to 40 members
Decisions are only guidelines (not enforceable) for committees and subcommittees

PROVIDE THE RECOMMENDATIONS TO THE CHAIRPERSONS OF THE TWO COMMITTEES

The recommendations would be provided the two appropriations committee chairpersons instead of being presented to all of the members of the two committees in a joint meeting. The process should include a meeting between the two chairpersons, leadership of the LFC, LFD staff to provide explanation and clarification, and possibly the chairs of each of the five appropriations subcommittees so that they could hear the same explanations.

Pros: Smaller, more manageable meeting size
Focus on key players in process with decision then shared with all other members
Leadership of respective committees participate in discussion

Cons: Decisions are only guidelines (not enforceable) for committees and subcommittees

REQUEST A COMMITTEE BILL TO PLACE SOME GLOBAL ISSUE ITEMS IN STATUTE

Because a few of the global issue items really don't have options to consider, and are merely included in the decision process to allow for an explanation of the issue and to ensure members understand why a consistent approach is necessary, these items could be placed in statute to discourage any variation from the rule that must be applied. The recommendations related to the starting point for subcommittee deliberations, fixed costs, inflation/deflation, and the avoidance of negative line items in HB 2 fall into this category. These do not lock the budget in place and prevent adjustments.

Pros: Takes some basically nonnegotiable items out of the discussion
It would reduce the possibility of someone in the future trying to do something in the budget that cannot be supported by the automated system

Cons:

CONCLUSION

Generally, it is the structure of the budget - - including its format, the subcommittee structure and process, the timelines for submission to the legislative staff and the legislature, and the timelines for completion of the

budget that are inherent in the development of the legislative calendar - - that enables the legislature to provide a certain level of policy direction to the executive and not just money. A predictable and consistent process allows legislators, session after session, to focus on the policy discussion relative to the budget rather than on the process. The handling of the “global issues” discussed above is a small part of the whole budget process. As each session begins, there needs to be clear understanding of the impact of these overarching issues and how they can be handled in a consistent and equitable way.

On a related point, it is important to remind legislators that because much of the budget structure and process is established in statute, there are a few key reasons the legislature should adhere to statutorily established processes¹:

- First, executive and legislative staff analysis and preparation is based upon those statutory features
- Second, the automated system used throughout the progression from development of a proposed budget by the executive to the final legislatively approved budget is based upon those statutory features
- Third, the legislature should follow the law

¹ There are also some “traditional” processes and structure that has to some degree been established in the budget process and the automated budget system based upon the precedent of years of past legislative action.

TITLE 17, CHAPTER 7 BUDGETING AND APPROPRIATIONS

Part 1 Budget Systems and Program Plans

17-7-101. Short title. This part shall be known and may be cited as the "Budget Act".

17-7-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

- (1) "Additional services" means different services or more of the same services.
- (2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.
- (3) "Approving authority" means:
 - (a) the governor or the governor's designated representative for executive branch agencies;
 - (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
 - (c) the speaker for the house of representatives;
 - (d) the president for the senate;
 - (e) appropriate legislative committees or a designated representative for legislative branch agencies; or
 - (f) the board of regents of higher education or its designated representative for the university system.
- (4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.
 - (b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.
- (5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.
- (6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.
- (7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.
- (8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.
- (9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.
- (10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:
 - (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
 - (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
 - (c) inflationary or deflationary adjustments; and
 - (d) elimination of nonrecurring appropriations.
- (11) "Program" means a principal organizational or budgetary unit within an agency.
- (12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.
- (13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural

experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020--sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) Definitions. As used in this chapter, the following definitions apply:

- (1) "Additional services" means different services or more of the same services.
- (2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.
- (3) "Approving authority" means:
 - (a) the governor or the governor's designated representative for executive branch agencies;
 - (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
 - (c) the speaker for the house of representatives;
 - (d) the president for the senate;
 - (e) appropriate legislative committees or a designated representative for legislative branch agencies; or
 - (f) the board of regents of higher education or its designated representative for the university system.
- (4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.
- (5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.
- (6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.
- (7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.
- (8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.
- (9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.
- (10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:
 - (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
 - (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
 - (c) inflationary or deflationary adjustments; and
 - (d) elimination of nonrecurring appropriations.
- (11) "Program" means a principal organizational or budgetary unit within an agency.
- (12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.
- (13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell.

17-7-103. Governor chief budget officer -- appointment of budget director. (1) The governor shall be the chief budget officer of the state and shall appoint a budget director who shall hold office at the pleasure of the governor and perform the duties assigned by law or by the governor.

(2) The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents.

(1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) 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.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(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; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

17-7-112. Submission deadlines -- budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) By September 1, each agency shall submit the information required under 17-7-111 to the budget director.

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the statewide project budget summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121.

17-7-113. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect. (1) Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or before the date established in 17-7-112, submit in writing to the governor and to the governor-elect, if there is one, a preliminary budget for the ensuing biennium containing the detailed information required to be set forth in the budget to be submitted by the governor to the legislature.

(2) If requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, the estimates, comments, and recommendations that the governor-elect may wish to make, and by the date established in 17-7-112, this section of the budget must be transmitted to the legislature and the legislative fiscal analyst without change. It is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

17-7-122. Preparation of budget. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to the legislative fiscal analyst in accordance with 17-7-112 for inclusion in the combined governor's budget and budget analysis report.

(2) Legislative branch budget proposals must be included in the budget submitted by the governor without changes.

(3) Judicial branch budget proposals must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123.

17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet.

17-7-124. Additional budget data. In addition to the budget required in 17-7-123, the governor shall prepare and make available on request a detailed analysis of receipts by accounting entity within each fund type indicating classification and source of funds.

17-7-125 through 17-7-130 reserved.

17-7-131. Legislative action -- ending fund balance. (1) The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions must be based upon the budget and proposed budget bill submitted at the request of the governor. The legislature may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

(2) The adopted budget must be limited so that a positive ending general fund balance exists at the end of the biennium for which funds are appropriated.

17-7-132. Right to appear on consideration of budget. The budget director and representatives of agencies expending or applying for state money may and, when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

17-7-133 through 17-7-137 reserved.

17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds \$1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than \$25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and \$25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds.

17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be

submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds \$1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold.

17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

- (2) Reductions in spending for the following may not be directed by the governor:
 - (a) payment of interest and principal on state debt;
 - (b) the legislative branch;
 - (c) the judicial branch;
 - (d) the school BASE funding program, including special education;
 - (e) salaries of elected officials during their terms of office; and
 - (f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than:

- (i) 2% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;
- (ii) 3/4 of 1% in October of the year preceding a legislative session;
- (iii) 1/2 of 1% in January of the year in which a legislative session is convened; and
- (iv) 1/4 of 1% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(4) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor.

17-7-141. Audit costs. Amounts appropriated for audits conducted under Title 5, chapter 13, may be transferred between fiscal years. Agencies shall reserve enough money in each fund to pay for audit costs and to the maximum extent allowable under federal regulations shall charge audit costs to federal funds.

17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system and community colleges. (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based upon resident enrollment projections and requires a reversion by the Montana university system or a community college if the resident enrollment projections are not met.

(2) The reversion must be calculated based upon the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based upon the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower.

17-7-143 through 17-7-149 reserved.

17-7-150. Definitions. As used in 17-7-151, the following definitions apply:

- (1) "Current biennium" means the biennium during which the legislature is meeting in regular session.
- (2) "Next biennium" means the biennium for which the regular session of the legislature makes appropriations.
- (3) (a) "State resources" means:
 - (i) the general fund;
 - (ii) state special revenue funds other than private funds;
 - (iii) federal special revenue funds;
 - (iv) proprietary funds that require an appropriation;
 - (v) long-range building program appropriations; and

- (vi) agency funds distributed to local governments.
- (b) The term does not include:
 - (i) debt service funds;
 - (ii) capital project funds other than those appropriated;
 - (iii) internal service or proprietary funds that do not require an appropriation;
 - (iv) fund transfers;
 - (v) enterprise funds;
 - (vi) unrestricted or other university funds;
 - (vii) agency funds not distributed to local governments;
 - (viii) private purpose trust funds;
 - (ix) permanent funds;
 - (x) pension trust funds;
 - (xi) noncash accounting entries; and
 - (xii) private funds deposited in state special revenue accounts.

17-7-151. Budget performance -- comparison. (1) The measure of budget performance is the total actual or estimated expenditure of state resources that reflects the cost of general government operations funded by taxes and fees.

(2) In preparing budget comparisons, the office of budget and program planning and the legislative fiscal division shall compare actual expenditures of state resources in the first year of the current biennium plus appropriations of state resources in the second year of the current biennium to appropriations of state resources in the next biennium. Anticipated reversions may be deducted from appropriated amounts per agreement between the two offices.

(3) The legislative fiscal analyst and the budget director shall enter into an agreement on measurement standards for budget comparisons. The office of budget and program planning and the legislative fiscal division shall use the same methodology to estimate the amounts of statutory appropriations. If there are differences in estimates of revenue or amounts of statutory appropriations, the legislative fiscal analyst shall explain the differences as part of the independent analysis of the executive budget.

(4) Budget comparisons must include the same attributes and methods of calculation. Items that are not appropriated at the beginning of a biennium, such as budget amendments, supplemental appropriations, and emergency appropriations, must be included in budget comparisons, but must be segregated and indicated as noncomparable items.

17-7-152 through 17-7-159 reserved.

17-7-160. Montana highway patrol exempt from vacancy savings -- report to audit committee. (1) Vacancy savings may not be imposed on authorized positions in the Montana highway patrol.

(2) For purposes of this section:

(a) "authorized positions" means those positions included in the list of current authorized positions that the Montana highway patrol is required to maintain under 2-18-206; and

(b) "vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

(3) Each fiscal year, the department of justice shall provide to the legislative audit committee a detailed report on all positions in the Montana highway patrol. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant;

(c) the total number of hours spent on patrol during the year broken out by enforcement activity and position title.

17-7-161. Game warden positions exempt from vacancy savings -- report to audit committee. (1) Vacancy savings may not be imposed on authorized game warden positions in the department.

(2) For purposes of this section:

(a) "authorized game warden positions" means those game warden positions included in the list of current authorized positions that the department is required to maintain under 2-18-206;

(b) "department" means the department of fish, wildlife, and parks established in 2-15-3401; and

(c) "vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of funding those authorized positions during that fiscal year.

(3) Each fiscal year, the department shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized game warden positions in the department. At a minimum, the report must include the following information:

(a) the number of authorized game warden positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the authorized game warden position remained vacant;

(c) the total number of hours worked in authorized game warden positions during the year broken out by enforcement activity and position title.

TITLE 5, CHAPTER 12 LEGISLATIVE FINANCE ACT

Part 1 General

5-12-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Finance Act".

(2) Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

5-12-102. Definitions. In this chapter, the following definitions apply:

(1) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

(2) "Budget director" means the budget director appointed pursuant to 17-7-103.

(3) "Committee" means the legislative finance committee created by this chapter.

(4) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

Part 2 Legislative Finance Committee

5-12-201. Legislative finance committee. There is a legislative finance committee which is a permanent joint committee of the legislature.

5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the presiding officer;

(b) subject to 5-5-234, two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the presiding officer; and

(d) subject to 5-5-234, two members of the house appointed at large by the speaker.

(2) These members must be appointed before the end of each legislative session. Three members of each house, two committee members and one at-large member, must be from the majority party and the other three members appointed from that house must be from the minority party.

5-12-203. Term -- officers -- compensation. (1) Appointments are for 2 years, and a member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as presiding officer and other officers that it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302.

5-12-204. Vacancies. If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in 5-12-202, to complete the unexpired term. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political

party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-12-202.

5-12-205. Powers and duties of committee. The committee:

- (1) may organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the presiding officer, to advise and consult with the legislative fiscal analyst;
- (2) may employ and, in accordance with the rules for classification and pay adopted by the legislative council, set the salary of the legislative fiscal analyst. The legislative fiscal analyst shall serve at the pleasure of and be responsible for providing services to the committee.
- (3) may exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title;
- (4) shall monitor the information technology policies of the department of administration with specific attention to:
 - (a) identification of information technology issues likely to require future legislative attention; and
 - (b) the evaluation of proposed information technology policy changes and the fiscal implications of the proposed changes and shall provide written responses to the department of administration communicating the committee's positions and concerns on proposed policy changes;
- (5) may accumulate, compile, analyze, and provide information relevant to existing or proposed legislation on how information technology can be used to impact the welfare of the state;
- (6) may prepare legislation to implement any proposed changes involving information technology; and
- (7) shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law.

Part 3

Legislative Fiscal Analyst

5-12-301. Legislative fiscal division. There is a legislative fiscal division. The legislative fiscal analyst shall manage the legislative fiscal division to support the legislative finance committee and carry out the provisions of this chapter.

5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

- (1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;
- (2) estimate revenue from existing and proposed taxes;
- (3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;
- (4) make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;
- (5) assist committees of the legislature and individual legislators in compiling and analyzing financial information; and
- (6) assist the revenue and transportation interim committee in performing its revenue estimating duties.

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information.

5-12-304. Employees and consultants. The legislative fiscal analyst may engage personnel and consultants to fulfill the duties of the division within the limits of appropriations for the division. The legislative fiscal analyst may define the duties of personnel engaged and shall fix the salaries of employees in accordance with the rules for classification and pay adopted by the legislative council.

Part 4

Budget Amendments

5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of its legislative appropriation, which includes a lawfully approved and valid budget amendment.