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as of 11/19/2015

**Fixed Costs and Indirect Costs Related to Licensing Boards' Fees**

by Pat Murdo, Legislative Analyst

How the Department of Labor and Industry (the Department) handles accounting and budgeting for licensing boards is the focus of Senate Bill 390, which is an effort to determine whether the charges by the Department to licensing boards are appropriate and how the charges relate to the services the boards receive. This study is not an audit to determine if the Department is handling its duties appropriately, although some of the questions relate to appropriateness of costs assessed to the boards. The exercise is intended to improve understanding of the direct and indirect board charges passed along to professionals who must obtain licenses from the state in order to practice in Montana.

For this report, the Department has described its direct and indirect charges. (See Appendix I for boards' direct and indirect costs.) Part of the report will provide examples of why legislators and board members have said in the past that the budgeting and accounting process has not always been transparent. Some board members also have said they feel they have little say in deciding overall expenditures and, as a result, in what they must assess licensees in fees. This paper will show areas where the boards have a

**Table 1: Which Comes First: Costs or Fees?**

Currently, costs are figured by the Department, then each licensing board determines fees. One concern voiced by some board members is that costs may not be kept low if they are determined first. Pros and cons are listed below.

<b>Costs Commensurate with Fees (not done)</b>	<b>Fees Commensurate with Costs (former language, current process)</b>
<p><b>Pros</b> - Gives more authority to board.  <b>Cons</b> - If a licensing board, which is responsible for imposing licensing fees, decides to keep fees at a low level, basic costs might not get covered. Another possible result might be that one semi-autonomous board would subsidize a board that kept fees low but had high costs. Responsibility would still rest with the Department for meeting budgets.</p>	<p><b>Pros</b> - Department has staffing and operating costs data for all boards and can ensure costs are met, if each board adopts appropriate fees.  <b>Cons</b> - Relies on Department to keep staffing lean, have appropriate balance of managers to classified personnel, and make decisions on rent, furnishings, and computer systems that are cost-efficient and necessary.</p>

**Table 2: Examples of Direct and Indirect Charges to Boards**

<b>Direct</b>	<b>Indirect</b>
Legal services (Includes rule review, screening panels, board counsel)	General insurance (for property, automotive)
Staff directly involved in licensing, managing boards, investigating complaints or continuing education reports.	Staff and department managers, plus overall IT staff and accounting staff.
Operating expenses (Includes printing, mailing, computers and other supplies)	Staff time for sick leave, vacations, training, or staff meetings.

role, where they do not, and differences with past processes or with other states' licensing boards' processes.

The information in this report also addresses some related questions, including:

- Does the Department inappropriately impose additional costs without the ability of boards to weigh in (although a right-to-comment might not be efficient with 33 licensing boards in the response chain)?
- Is the process itself inordinately nontransparent or unwieldy?
- Does the Department as money manager for the boards interfere with the boards' abilities to operate or favor some boards at the expense of others?
- Is public safety affected if a board directly involved in public safety issues decides to decrease inspections to avoid increasing fees that the Department says are needed to cover costs that the board may have no direct say over?

Although not strictly part of the study, aspects of this briefing paper will cover additional questions that relate to bills enacted in the 2015 session. See Table 3. Two bills have termination dates, which means that continuation of the changes will need action by a future Legislature. Additional discussion of the following bills are under "Funding options", below:

- Department-requested bills affecting boards included SB 76 and SB 79. **SB 76** targeted board processes to help boards to minimize costs associated with routine complaints, such as failure of a licensee to obtain continuing education credits. **SB 79** revised the term "fees commensurate with costs," first put into law in 1981, by replacing the terminology in favor of a description that says fees ought to generate "the amount of money usually needed for the operation of the board for services... ." The bill was requested, in part, to address some audit criticisms, and the Department used the bill to fix accounting problems related to licensing cycles and anomalous years of excess revenues.
- **House Bill 223** revised the charge for death certificates and designated most of the additional income from that charge to be used to help fund the Board of Funeral Service. The legislation put limits on the additional funds so that those paying for death certificates would not foot the bill completely for the Board of Funeral Service. The excess over what the licensing fees and an equivalent amount of death certificate revenues generate then goes into the general fund. The Board is expected to get \$182,529 from the increased cost of death certificates -- nearly as much as the entire revenues projected in FY2013 of \$198,745. A termination date of June 30, 2017, means that the 2017 Legislature will consider whether this funding mechanism ought to remain for the board. The Board is to report to the Economic Affairs Interim Committee (EAIC) in 2016 on the funding and licensing fees.
- **HB 560** created an enterprise fund for the Board of Public Accountants and allowed the Board to have statutory appropriation authority. This means expenditures are not limited to what the Legislature appropriates biennially to the Department for the Board in HB 2, although HB 560 does say cash reserves may not drop below 15% of the average of the Board's last 3 years of revenues. The Department no longer is to include the Board of Public Accountants' budget in its HB 2 budget process, although the Department still monitors the Board's budget and its compliance with the 15% cash reserves. A termination date of Oct. 1, 2019, gives this approach a pilot project potential to see if an enterprise fund removes constraints related to appropriation and spending authority. The Board of Public Accountants will be able to spend without concern that the Department has needed the Board's appropriation authority elsewhere, which would leave the Board of Public Accountants with the cash

**Table 3: 2015 Bills Affecting the SB 390 Study**

- **SB 76** - allowing the Department, if authorized by boards, to handle some routine processes previously done by boards.
- **SB 79** - revising the term "fees commensurate with costs" to be broader regarding operational costs.
- **HB 223** - affecting how the Board of Funeral Service receives some of its funding.
- **HB 560** - revising how the Board of Public Accountants and the Department handle the finances for that board.

but no authority to use it.<sup>1</sup>

### A Brief History

The following history provides context for how licensing boards operate. Various changes to operations in the past 40-plus years have included a three-fold expansion in the number of boards, imposition of administrative attachment and Department budgeting, plus efforts to improve efficiency through reorganizations, which also impacted budgets.

**Administrative Attachment** -- Eleven of the 33 licensing boards now in existence came into being before the statute for administratively attached boards went into effect in 1971. (These boards are in the shaded rows in Table 4.) Some current members<sup>2</sup> of those boards may have heard stories about how boards operated before the general reorganization of Montana's state government began in the 1970s, when board autonomy -- in terms of policies and budgeting -- was common.

**Table 4: Licensing Boards, Licensees, License Renewal Cost, Percent of Indirect to Total Costs**

Created	Board	Licensees FY 2015		Renewal Costs, 2015	% of Indirect to FY 2015 Board Costs
1991	Alternative Health Care	naturopaths	110	\$550/yr	12.4%
		midwives	33	\$550/yr	
2007(m)	Architects and Landscape Architects	architects	1,723	\$55/yr	9.9%
		landscape arc't	149	\$250/yr	10.2%
2007	Athletic Trainers, Board of	athletic trainers	191	\$175/yr	14.0%
2003(m)	Barbers and Cosmetologists, Board of	instructors	90	\$95/2 yrs	8.2%
		practitioners	6,123	\$80/2 yrs	
		schools	15	\$220/yr	
		salon/shop	1,915	\$85/yr	
2015(m)	Behavioral Health, Board of	social workers	1,023	\$175/yr	10.5% (doesn't include addiction counselors for FY 2015)
		professional counselors	1,441	\$175/yr	
		marriage/family therapists	179	\$175/yr	
		addiction counselors	828	\$150/yr	

<sup>1</sup>Another explanation of the enterprise funding approach was in a letter to the 2013-2014 EAIC: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/March-2014/LTR-brd-public-accountants.pdf>

<sup>2</sup>Around 1,000 current licensees obtained their first state licenses prior to their board becoming administratively attached to a department in 1971.

1918	Chiropractors, Board of	chiropractors	557	\$200/yr	7.0%
1993	Clinical Laboratory Science Practitioners, Board of		1,186	\$60/yr	9.1%
1895	Dentistry, Board of	dentists	936	\$306/yr	6.3%
		dental hygienists	989	\$140/yr	
		denturists	23	\$200/yr	
1965	Electrical Board	contractors	844	\$300/2 yrs	9.5%
		masters/journeyman /residential	828 / 1449 / 70	\$200/2 yrs	
1963	Funeral Service, Board of	mortuary/ crematory	78/ 39	\$450/yr	8.2%
		mortician	193	\$300/yr	
		crematory operator/ technician	99/ 46	\$150/yr	
1969	Hearing Aid Dispensers, Board of	dispensers	69	\$1,500/yr	9.2%
2009*	Massage Therapy, Board of	massage therapists	2,215	\$90/yr	13.5%
1889	Medical Examiners, Board of	physicians/ podiatrists	3,534 / 40	\$500/2 yrs	7.3%
		nutritionists	235	\$150/2 yrs	
		acupuncturists	94	\$150/2 yrs	
		physician assistants	426	\$300/2 yrs	
		emergency medical technicians (incl. EMR, AEMT)	3,544	\$30-\$70/ 2 years	
		paramedics	582	\$100/ 2 yrs	
1913	Nursing, Board of	nurses	22,388 RN 4,029 LPN	\$100/2 yrs	8.2%
		advanced practice certificates	1,058	\$50 for each certificate	
		medication aide I or II	Level 1 14 Level 2 106	\$20/yr	
1969	Nursing Home Administrators, Board of	administrators	277	\$235/yr	11.1%

1985	Occupational Therapy Practice, Board of	registered therapist and certified assistant	538 173	\$110/yr	12.1%
1974	Optometry, Board of		296	\$125/yr	7.7%
1973	Outfitters, Board of	outfitters	788	\$375/yr	10.0%
		guides	3,540	\$150/yr	
1895	Pharmacy, Board of	pharmacists	2,181	\$110/yr	11.1%
		mail order pharmacy	890	\$400/yr	
		pharmacy technician	497	\$50/yr	
		certified pharmacy technician	1,541	\$250/yr	
		wholesale drug distributors	1,514	\$400/yr	
1979	Physical Therapy Examiners, Board of	physical therapists	1,445	\$60/yr	10.7%
1974	Plumbers, Board of	journeyman	752	\$160/yr	7.1%
		master plumber	783	\$265/yr	
1983	Private Security, Board of	contract companies	86	\$200/yr	12.9%
		resident mngr	157	\$125/yr	
		security guard	1,760	\$100/yr	
		private investigator	264	\$175/yr	
		firearms instructor	44	\$125/yr	
		process server	179	\$100/yr	
2005	Private Alternative Adolescent Residential or Outdoor Programs, Board of	0-10 enrollees 11-25 enrollees 26-50 enrollees 51 or more enrollees	22	\$1,688/yr \$4,345/yr \$8,138/yr \$13,313 /yr	12.5%
1957	Professional Engineers & Land Surveyors, Board of	engineers	1,902	\$100/2 yrs	12.4%
		surveyors	129	\$100/2 yrs	
		dual licensees	11	\$120/2 yrs	
1974	Psychologists, Board of	psychologists	271	\$600/yr	13.6%
1969	Public Accountants, Board of		3,123	\$150/yr	10.8%

1975	Radiologic Technologists, Board of	radiologists	1,530	proposed \$75/yr, from \$50	13.5%
1991	Real Estate Appraisers, Board of	appraisers	451	\$475/yr	9.1%
1979	Realty Regulation, Board of	brokers	2,393	\$175/yr	8.8%
		sales persons	3,729	\$150/yr	
1991	Respiratory Care Practitioners, Board of		777	\$75/yr	9.6%
1974	Sanitarians, Board of		185	\$270/yr	10.6%
1975	Speech Language Pathologists & Audiologists, Board of	speech pathologists	611	\$200/yr	15.4%
		audiologists	88	\$200/yr	
1913	Veterinary Medicine, Board of	veterinarians	1,207	\$145/yr	9.7%
		embryo transfer and euthanasia technicians	11 24	\$145/yr	

(m) stands for merged board and is the date used in prior studies of licensing boards. The Board of Barbers and the Board of Cosmetologists were created separately in 1929 but merged in 2003. The Board of Architects was created in 1917 and merged in 2007 with the Board of Landscape Architects, which was originally created in 1975.

\*A Board of Massage Therapy existed in the past but a sunset process dissolved the board.

Today all boards, except the Board of Livestock, are administratively attached agencies. What this means, according to 2-15-121, MCA, in terms of budgets is that a board, as an administratively attached agency must, under 2-15-121(1)(b), MCA, submit its budgetary requests through the department to which the agency (board) is administratively attached.

A department, however, exercises substantial control because a department, under 2-15-121(2), must:

- (a) direct and supervise the budgeting, recordkeeping, 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. *[NOTE: This reference is to a law that says the Department of Labor and Industry can, after providing appropriate notice, charge a board's licensees directly if the board fails to operate cost effectively.]*
- (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.

The three departments that have managed almost all licensing boards<sup>3</sup> since 1971 have implemented 2-5-121, MCA, in varying fashions. Before the Department of Professional and Occupational Licensing acquired licensing boards in 1971, the licensing boards generally operated independently, hiring their own staff, among other activities. When the newly created Department of Commerce became the

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<sup>3</sup>There is a Board of Water Well Contractors, which licenses water well contractors and is under the Department of Natural Resources and Conservation.

administrative attachment for the boards in 1981, a new statute went into effect saying that fees assessed by boards were to be commensurate with costs. In 2001 the Department of Labor and Industry took over management of licensing boards and began exercising more direct control as legislative changes gave the Department more specific authority for imposing fees and providing uniform board standards. The Department proposed legislation in 2005 to implement efficiency recommendations made in a 2004 performance audit; the result was more control centered in the hands of Department personnel. Among the changes were specific requirements added in 2005 for the Department to impose administrative fees "commensurate with the cost of services provided."<sup>4</sup>

**Budgeting Transparency** -- Prior to the 2005 statutory changes, the Department compiled board budgets using a combination of direct costs, indirect costs, and what it called "recharges."<sup>5</sup> The recharges had elements of indirect costs. Today the budget categories are more simply direct and indirect costs.

The pre-2005 budget calculations were more complicated, as indicated in a May 17, 2005, letter to then-Sen. Trudi Schmidt who had asked the Department of Labor and Industry to explain recharges, administrative costs, operating costs, and personal services costs for each board. Her letter also noted concerns with costs due to reorganizations. Her questions were similar to those posed in SB 390.

Reprinted below is an explanation of recharges from the Department's response to Sen. Schmidt to illustrate how confusing the budgeting process was. See Table 5 for a review of how the pre-2007 budgeting migrated to budgeting today. To reiterate, the recharges were separate from indirect costs, which were 6.7% of "total personal services minus board member (\$50/day) per diem costs."

Recharges (or the pro rata share) are charges assessed to the boards associated with the costs incurred by the Department to administer the programs...The recharge is actually the sum of three separate budgets. These entities are respective Bureau (Business & Occupational Licensing or Health Care Licensing), the Business Standards Division and the Legal Unit. Their costs are assessed and then combined to total one amount labeled recharge on each board's financial documents...<sup>6</sup>

Budgets included in the reply to Sen. Schmidt did not provide a line-by-line correlation so that overall bureau costs for some of the recharges were not listed as specific board costs. For example, in the information provided to Sen. Schmidt, a fixed administrative cost for SABHRS (Statewide Accounting, Budgeting, and Human Resources System) was projected in FY 2007 at \$16,188 for the Professional and Occupational Licensing Bureau (and \$14,731 for the Health Care Licensing Bureau). This charge for the sample board provided to Sen. Schmidt, the Board of Landscape Architects, included recharges for operating expenses (\$17,895) with statewide indirect costs at \$34.15, and agency indirect costs at \$667. The board also was charged \$288 for its share to remodel the reception area in 2004.

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<sup>4</sup>See 37-1-101(11), MCA.

<sup>5</sup>For more on budgeting, see: [leg.mt.gov/content/committees/interim/2005\\_2006/econ\\_affairs/committee\\_activities/BOARD\\_BACKGROUND\\_DRAFT.pdf](http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/committee_activities/BOARD_BACKGROUND_DRAFT.pdf)

<sup>6</sup>See [http://leg.mt.gov/content/committees/interim/2005\\_2006/econ\\_affairs/minutes/EAIC09092005\\_7.pdf](http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/minutes/EAIC09092005_7.pdf), the minutes from the September 2005 EAIC meeting. The explanation of recharges starts on about p. 7 of Exhibit 7. The boards that paid the largest portion of recharges for the FY2006 budget of \$904,668 in the Bureau of Occupational Licensing, were the Board of Realty Regulation (18% of the total), the Electrical Board (12%), the Board of Barbers and Cosmetologists (about 12%), the Board of Public Accountants (nearly 11%), and the Board of Professional Engineers and Professional Land Surveyors (about 11%). For the Health Care Licensing Bureau's recharge in FY 2006 of \$1,014,225, the largest percentage payments were by the Board of Medical Examiners and the Board of Nursing (both around 20%). The next highest was the Board of Pharmacy (about 11%).

**Table 5: Pre-2007 Budgeting Compared with Budgeting Today**

	<i>Pre-2007 Budgeting</i>	<i>Budgeting Today</i>
Department costs (Passed through to boards for warrant writing, insurance, messenger service, the state budget services --SABHRS)	Included in bureau budgets; a percentage then was taken for each board, based on a time distribution basis. As explained by the Department, the primary difference between the recharge system and the current time distribution system was that recharge costs were allocated to boards based on time charged in the previous budget cycle (two years earlier), while today's time distribution is based on direct charges in the previous quarter.	Indirect costs for insurance and state budget services based on time distribution.  Messenger service assessed to bureaus based on number of mailbox users plus indirect costs based on time distribution. For Department personnel costs (not directly attributed to a board), the federally negotiated indirect cost rate of 7.6% is assessed. (This includes department payroll, budgeting, human resources, and accounting personnel.)
Division operating costs and full-time equivalent salaries and benefits	Recharges - Assessed to the bureaus on a time distribution basis, then charged to boards using time distribution of all bureau staff. Paid for: <ul style="list-style-type: none"> <li>• Division operating expenses</li> <li>• Division administrator</li> <li>• Division administrative officer</li> <li>• Information Technology staff</li> </ul>	For Division personnel and operating costs, indirect costs are calculated using a time distribution basis from direct board activities.  For IT not directly charged to a board, time distribution percentages are used.
Bureau general expenses, including operating and personnel costs for bureaus	Time distribution from prior budget cycle assigned to each board based on personal services of board-specific specialists plus: <ul style="list-style-type: none"> <li>• the bureau chief;</li> <li>• the board administrative officer;</li> <li>• the unit supervisor.</li> </ul> Direct charge for board-specific operating expenses.	The three bureaus (instead of two in the licensing unit prior to the 2012-2013 reorganization) use the time distribution for indirect general expenses and personnel costs and assign direct charges for board-specific costs.
Legal charges	Direct charge for attorney time spent on a specific board.  Recharges were levied for the operating expenses or attorney time that was not directly allocated for a specific board (as in vacation or sick leave time).  For FY 2006, the share of the legal unit's costs were \$254,995 for the Business and Occupational Licensing Bureau and \$235,381 for the Health Care Licensing Bureau.	Direct charge for attorney time spent on a specific board (\$103/hr compared with the \$106/hr in the Department of Justice). The direct charge includes supplies and legal secretary costs.



<p>Board-specific charges These costs are much the same now as they were prior to 2007. As such, they are listed just in the middle column. The far right column shows what allocations would be if based on the number of licensees vs. the current use of direct hours.</p>	<ul style="list-style-type: none"> <li>• Board member per diem (\$50 if on board business plus travel, lodging, and meals)</li> <li>• Rent, including rent for large or small meeting rooms</li> <li>• Special IT projects</li> <li>• Mailing and postage</li> <li>• All charges in half-hour increments of staff salaries and benefits for any bureau staff directly working on board activities.</li> </ul>	<p>The Department provided two examples of distribution allocations for selected boards:</p> <table border="1"> <thead> <tr> <th></th> <th># Licensees</th> <th>Direct Hours</th> </tr> </thead> <tbody> <tr> <td>Realty Reg</td> <td>7.37%</td> <td>11.03%</td> </tr> <tr> <td>Prof. Eng.</td> <td>10.8%</td> <td>3.36%</td> </tr> <tr> <td>Nursing</td> <td>20.16%</td> <td>11.19%</td> </tr> <tr> <td>Outfitters</td> <td>2.14%</td> <td>5.22%</td> </tr> <tr> <td>Pharmacy</td> <td>5.93%</td> <td>8.29%</td> </tr> <tr> <td>Real Estate Appraisers</td> <td>0.82%</td> <td>4.78%</td> </tr> </tbody> </table>		# Licensees	Direct Hours	Realty Reg	7.37%	11.03%	Prof. Eng.	10.8%	3.36%	Nursing	20.16%	11.19%	Outfitters	2.14%	5.22%	Pharmacy	5.93%	8.29%	Real Estate Appraisers	0.82%	4.78%
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The budget transparency situation tends to be similar today as licensees who ask for explanations of a board budget may get varying information. See Appendix 2 for a comparison of materials provided to past Economic Affairs Interim Committees or to standing Business and Labor Committees by board members. Although all the information is available at some level in SABHRS, the specific response often is unclear to the untrained eye.

Even if still somewhat confusing, budgeting became more streamlined after 2007, with board personnel no longer using recharges and using a nearer-in-time "time distribution" to record their total time spent on specific boards. ("Nearer-in-time" is the previous quarter rather than the previous biennial cycle as used for the recharges.) The direct time then was divided by the entire costs to determine the percentage of a specific board's time that would be assessed for indirect costs. The theory was that boards that require more direct time also would bear a greater percentage of the indirect time in a proportional measure. This theory countered one proposal that boards with a greater number of licensees ought to bear more of the indirect costs of the Department. But analysis by the Department -- see lower right corner of Table 5 (above) -- showed that direct hours spent working on a board was not necessarily equal to the number of licensees. Licensing is only one function of a board, after all, so that investigation of complaints, complex requirements for continuing education that must be audited, or multiple screening panels all contribute to direct time spent by staff on a board. The nearly 10,000 professional engineers and professional land surveyors, for example, had fewer problems or activities required by Department staff than did the nearly 800 real estate appraisers, according to the Department calculation of time spent.

Other improvements made in budgeting included calculations by the Department fiscal staff of 5-year expenditures to help in determining whether to request greater budgetary authority from the Legislature for certain boards. The 5-year analysis helped to determine if certain years represented aberrations in expenditures or growth or decline in the profession.

**Reorganizations** -- As mentioned earlier, the 2004 audit's efficiency recommendations resulted in several changes to the way that boards operated and how the Department charged for those operations. An even more significant reorganization took place in 2012-2013 after which the two long-time bureaus, the Health Care Licensing Bureau and the Occupational and Professional Licensing Bureau, were reorganized into a Licensing Bureau, a Compliance Bureau, and a Management Bureau. This functional approach united similar tasks, regardless of the type of licensing board. One core effort of the reorganization was to continue a move away from using licensing specialists to serve only one or two boards when the skills that they brought to the process could be used for multiple boards and provide depth in a position so that one absent staff person did not delay licensing.

### How the budgeting process works

Given the duty to supervise budgeting, the Department keeps boards informed of various budget components. The information has differed among boards or been presented in differing ways over time. (See Appendix 2.) Basically Division personnel discuss budgets at board meetings and convey to board members whether their fees are adequate to cover costs. If the fees are not adequate to cover projected costs, then boards are asked to raise fees or remove or reduce discretionary expenses. Board members receive information like that shown in Table 6 regarding cost decisions.

As listed in a [background paper](#) provided for the June 2015 EAIC meeting, the following items are discretionary for a board:

- per diem for board members, which is set by 2-15-124(7) as \$50 "for each day in which the member is actually and necessarily engaged in the performance of board duties...." However, a board member is not required to accept the \$50 per diem.
- board member travel. Again, statutes 2-18-501 through 2-18-503, MCA, outline what board members are to receive for lodging and meals. A board member does not have to accept per diem, but the budget usually addresses those prospective costs. Some boards have authorized travel to out-of-state meetings not only for board members but for their assigned executive officers or program managers. Some boards also hold meetings in various towns in Montana, although most meetings are in Helena. Boards with tighter budgets may limit meetings by holding conference calls to reduce their costs or may seldom meet.
- meeting room expenses for out-of-town meetings voted upon by board members. The cost of meeting rooms and all other space used by the Business Standards Division at its 316 N. Park Avenue building in Helena is divvied among boards based on a time allocation basis.

Listed as partially discretionary were such items as printing services, postage, consulting services, and vehicle expenses. Boards might decide to send voluminous (3-inch-thick) board meeting books to each member ahead of a meeting. Or they might send links for board members to view materials electronically.

In addition to meeting-specific and general operating costs, a board may choose to be more or less strict in its handling of licensing, complaints, and investigations. A board that requires all applicants for licenses to come before the board (for example, the Board of Sanitarians) will take more board time and the same amount or more staff time than providing specifics to staff as to what types of license applications are routine enough for staff to approve and what types need the board to review because of some aberration in the application.

SB 76, suggested by the Department in 2015, was intended to avoid having a board rely on screening panels and adjudication panels for various licensee problems, including a licensee submitting fees with insufficient funds to cover the amount, or similar oversights or quantifiable problems that staff can handle rather than requiring a board decision as to punishment. Whether SB 76's approach will decrease the number of complaints heard by screening panels remains to be seen. Screening panels raise the cost of board staffing and investigations, but also are a public safety component if the reason for the panel is inappropriate practice rather than insufficient funds to pay to renew a license.

If boards want additional activities, including trips to attend national association meetings to learn best

**Table 6: Example of meeting/screening costs**

In July 2014 the EAIC heard a [report](#) from then-administrator of the Business Standards Division, Adam de Yong, about the Board of Hearing Aid Dispensers. That board had FY 2012 expenses of \$83,879, which included costs for 2 full board meetings and 5 adjudication or screening panel meetings. The report noted minimal savings in two cases:

- eliminating the adjudication or screening panel meetings would yield \$2,516 in savings;
- eliminating the board itself would yield \$3,522 in savings, still requiring \$80,357 for the 59 licensees to cover annual costs (about \$1,361 each).

Retaining the board meant the licensees paid \$1,500 each.

practices in their profession, then the department adds these costs to the budget request presented to the next Legislature. However, not all requests get included in a final budget. Moreover, budgetary constraints or legislative influence may affect budget requests. See Table 7 for one example of how a budget request encountered various wrinkles in the budgeting process.

**Table 7: Example of a budget request, prospectively funded but altered along the way**

One example of the difficulties that come in being administratively attached also shines a light on the entire budget process that involves the Office of Budget and Program Planning and the Legislature. This example came from the Board of Medical Examiners wanting to increase the contract in the FY 2015 Biennium with its medical assistance provider. The budget office reportedly asked if the Department, which did not have direct contracting authority in statute for medical assistance programs (although the board did have), could handle the program inhouse more cheaply than a private contractor could. The Department agreed it could, and the Legislature adopted a lower budget for the Board of Medical Examiners, expecting the Department to handle the program. Instead of a pass-through budget item using state special revenue -- paid for by licensees of the Board of Medical Examiners -- the contract cost conflicted with an effort to lower the overall budget making its way through the Legislature. Although the Department could have contracted with licensing boards that had the authority to implement medical assistance programs, the request was for expanded programs, and that request ran into complications. This example illustrates that boards under the administrative attachment statute may submit budgetary requests, but they are not guaranteed to get them for what may be a variety of reasons.

**Other states' approaches**

Licensees often complain to legislators that their fees increase when there seems to be no commensurate return or that they can get licenses to work in other states more cheaply.<sup>7</sup> There may be many reasons why certain states charge less than others for licensing renewals. Some states do not have boards in the same way that Montana does. For example, in the 2013-2014 interim, EAIC members heard from a contractor in South Dakota who handled several of that state's licensing boards, including the board for hearing aid dispensers. A hearing aid dispenser licensee in Montana had provided the EAIC at its January 2014 meeting with samples<sup>8</sup> of licensing fees in Idaho (\$125 annual renewal fee) and South Dakota (\$200 annual renewal fee) and asked why Montana's fees at \$1,500 for renewals were so much higher.

Department responses<sup>9</sup> at the March 2014 meeting for the greater costs in Montana included a review of laws impacting hearing aid dispensers in Montana, Idaho, North Dakota, South Dakota, Washington, and Wyoming. Although most had similar cancellation and refund policies, except for Wyoming, one factor was that boards in all but Montana and Wyoming included additional licensees (speech pathologists and audiologists) who expanded the number of licensees sharing the fixed costs. The Montana renewal fee for hearing aid dispensers had increased to \$1,500 after legislation in 2011 removed requirements for audiologists to be dually licensed as audiologists and hearing aid dispensers. In addition to the number of licensees and whether professions are combined under one board, other reasons for cheaper licensing costs may include fewer regulations and less involvement by staff and more involvement by board members in investigations. Whether savings is achieved by contracting for services, as North Dakota and South Dakota do for certain boards, is not clear.

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<sup>7</sup>See the [final report](#) on a study required by HB 525 in the 2011-2012 and 2013-2014 interims. Also see the comments submitted by licensees in a survey. One [survey summary](#) in which fees were cited as problematic is from the Board of Architects and Landscape Architects.

<sup>8</sup>See information on Idaho and South Dakota in exhibit 31 in the January minutes log: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/January-2014/ex%2031.pdf>.

<sup>9</sup>See <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/March-2014/licensing-boards-DLI-response-questions.pdf>

A legislative interim study in 2005-2006 of licensing boards in Montana provided cost comparisons<sup>10</sup> with South Dakota, North Dakota, Washington, Idaho, and Wyoming. Washington uses a department, rather than boards, to license professionals with help from advisory councils or commissions. A comparison of licensing fees among various professions reveals some differences but does not give a reason why fees in Montana differ from, or in some cases are similar to, those of their counterparts in nearby states. For informational purposes only, see Table 8 for sample comparisons on renewal fees for select professions.

**Table 8: Comparisons of Renewal Fees in Select Professions in Nearby States**

	<i>Montana</i>	<i>N. Dakota</i>	<i>S. Dakota</i>	<i>Wyoming</i>	<i>Idaho</i>	<i>Washington</i>
Accountants	\$150/yr	Not to exceed \$100/yr	\$50/yr	\$200/yr offline	\$120/yr	\$230/ 3 yrs
Marriage and Family Therapist	\$175/yr	\$140/ 2 yrs	\$75/yr		\$100/yr	\$156/yr
Morticians/ Funeral Service Directors	\$300/yr	\$100/yr	\$125/yr	\$125/yr	\$85/yr	\$135/yr temp. reduction
Physicians	\$500/ 2 yrs	\$205 online; \$250 paper	\$200/yr	\$275/yr	Through Federation. of State Med. Brds	\$657 2 /yrs
Occupational Therapists	\$110/yr	\$150/ 2 yrs	\$50/yr.	\$110/yr	\$55/yr	\$145/ 2 yrs
Outfitters	\$375/yr		Game and Fish Dept. licenses. If a resident, \$100 - fish outfitter; \$200-\$500 - hunting outfitter	\$600 (not described as a renewal)	Online \$400; Offline \$450	Whitewater river outfitters \$25 per locale
Veterinarians	\$145/yr	\$75/yr.	\$100/ 2 yrs	\$65/yr	\$175/yr	\$175/yr

### **Balancing acts**

The Department has an unenviable role of setting budgets both for boards that want to overreach at the potential expense of their licensees and boards that are unwilling to charge fees that the Department considers appropriate for the costs of operations. Complicating the Department's role is the often-cited concern that some licensing boards use regulations and complaints to stifle competition rather than strictly to protect public safety. Because the boards operate independently in terms of licensing and policymaking (as stated in 2-15-121(1)), "without approval or control of the department," the Department has limited intervention authority.

However, the Department also has an obligation under 37-1-101(9) to notify a board if the board is not operating in a cost-effective manner and to "(b) suspend all duties under this title related to the board except for services relate to renewal of licenses.... ." From that directive, the Department may direct its

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<sup>10</sup>See [http://leg.mt.gov/content/committees/interim/2005\\_2006/econ\\_affairs/meeting\\_materials/BoardxBoard.pdf](http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/meeting_materials/BoardxBoard.pdf).

staff to suspend investigations into board complaints, even if they are aimed at discovering whether a licensee's actions are impacting the public safety, health, or welfare. Another safety valve for the Department is that the Department must notify the Economic Affairs Interim Committee when a licensing board is fiscally in trouble and is to make recommendations on whether the board should remain in existence or take other actions to achieve fiscal solvency. See 37-1-101(9)(c). The duty to report and the duty to serve complicate any relationship that may develop between staff and boards.

### **Funding options**

Because two board-related bills enacted in 2015 had termination dates, the Economic Affairs Interim Committee may want to look at questions related to funding for boards. The main questions are whether outside money, such as general fund, ought to pay for basic costs of boards that the Legislature determines are implementing public health or safety regulations. Perhaps the Legislature also might want to consider whether implementation of economic welfare requirements also are a reason to support a board with public funds.

One of the problems with boards, in general, is that a Legislature typically wants to please members of the profession with allowing those members to regulate themselves through a licensing board. However, having licensing boards increases regulation and costs of business, which are two associated aspects that many legislators do not like. The conundrum permeates board and legislative relationships.

Another example of the uneasy relationship between boards and the Legislature is indicated by the effort by the Board of Funeral Service to obtain an infusion of funding to avoid increasing costs for an industry that both regulates and protects public health and safety. The result of HB 233 was to essentially allow for a doubling of the Board of Funeral Service budget. Although HB 223 included amendments that prohibited a lowering of license fees and limited use of the death certificate revenues to general administrative expenses, the basic premise of the legislation was to allow a licensing board to use state-generated money from something other than licensing fees to pay the costs of a board. That approach is something new, and also something worth considering whether to continue in that vein when the Legislature considers in 2017 whether to terminate the changes brought by HB 223 or continue them.

On a different trajectory, the Board of Public Accountants sought more budgetary independence from the Department in the 2015 Legislature. That board's intent was to exercise its independent accounting expertise rather than that of the Department and also not be subject to budgetary constraints through the Legislature's appropriation authority. By letting the board have enterprise funding status and statutory appropriation authority, the Legislature is giving away some of the administrative attachment sideboards that boards have had, whether for good or ill. The termination of HB 560 is set for October 2019, with either the 2017 Legislature or the 2019 Legislature likely to get a request for continuation of the enterprise option. If the Board of Public Accountants shows that the money management works well with enterprise funding, then more licensing boards may seek to move in that direction.

### **Summary**

The SB 390 study of whether the Department is appropriately assessing fees commensurate with costs and is providing a transparent accounting of budgets has many facets. Some licensing board members feel the Department is doing a good job of keeping them informed. Others say the Department could do more. Statutory requirements both in the administrative attachment law, 2-15-121, MCA, and in the Department's duties in 37-1-101, MCA, make life complicated for the Department and frustrate the boards. Determining whether improvements could be made in these statutes or whether they are operating smoothly is one of the tasks that SB 390 ultimately may succeed in accomplishing.

## Appendix Index

Appendix I includes:

- Board direct costs
- Board indirect costs

Appendix II includes:

- Page 1 -- Presentation to 2013-2014 Economic Affairs Committee showing a breakdown of direct charges, division-level charges, and department-wide costs, all assessed to the boards.
- Page 2 -- Same presentation (as above) also showed fluctuations in expenses based on a 5-year review of licensing board expenditures.
- Page 3 -- Information gathered for the House Bill 525 review of licensing boards. This one is for the Board of Psychologists, showing direct expense categories and indirect expenses as well as the share of each category to the total expense.
- Page 4 -- An exhibit presented to the Senate Business and Labor Committee for HB 223 in the 2015 Session, showing the revenues and expenditures by month for the Board of Funeral Service. The document also shows cash ending balance shortfalls for seven months.
- Pages 5-7 -- The Expenditure Summary by Account for 66020 Labor and Industry shows all the expenditures in detail over a 5-year comparative period.
- Page 8 -- This 10-year fund balance for an unspecified board, basically shows a fluctuating cash balance in robust and slim budget periods.
- Page 9 -- The final page shows a revenue and expenditure chart for the Board of Plumbers, again showing fluctuations in the budget soundness, depending on licensing periods.