AGENDA

FINANCE-APPROPRIATIONS WORKING GROUP

2:30 P.M.

WW02

Wednesday, October 14, 2020

TIME	DESCRIPTION	PRESENTER
2:30 PM	Welcome and Overview of Working Group	Co-Chairs Senator Steve Bair and Representative Rick Youngblood
	Recap of August 11, 2020 Meeting Regarding the Non-Cognizable Funds Process, Section 67-3516(2), Idaho Code	Paul Headlee, Manager, Budget & Policy Analysis, LSO
	How Other States Address Unanticipated Federal Funds	
4:30 PM	Adjourn	

Live audio stream made available by Idaho Public Television at:
legislature.idaho.gov

COMMITIEE MEMBERS

Senator Bair, Co-chairman	Representative Youngblood, Co-chairman	
Senator Johnson	Representative Horman	
Senator Lee	Representative Anderson	
Senator Agenbroad	Representative Amador	
Senator Crabtree	Representative Kauffman	
Senator Grow	Representative Raybould	
Senator Burtenshaw	Representative Syme	
Senator Woodward	Representative Troy	
Senator Ward-Engelking	Representative Wintrow	
Senator Nye	Representative Toone	

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Idaho Legislature
Finance - Appropriations Working Group Report

August 11, 2020

By: Co-chairs Senator Bair (Senate Finance) and Representative Youngblood (House Appropriations)

Working Group Charge

The working group, composed of membership from the Senate Finance Committee and House Appropriations Committee, was convened to consider the following:

- Management of unusually large amounts of non-cognizable funding received by the state, such as funds recently received under the federal CARES Act.

- When reviewing the non-cognizable process, the working group should also consider:
  - the health and safety of the public,
  - urgency in expending the funds,
  - transparency of the transactions, and
  - the Legislature's role in the process.

Membership

Senator Steve Bair, Co-chair	Rep. Rick Youngblood, Co-Chair
Senator Dan Johnson	Representative Wendy Horman
Senator Abby Lee	Representative Neil Anderson
Senator Jeff Agenbroad	Representative Clark Kauffman
Senator Carl Crabtree	Representative Caroline Nilsson-Troy
Senator Van Burtenshaw	Representative Paul Amador
Senator C. Scott Grow	Representative Scott Syme
Senator Jim Woodward	Representative Britt Raybould
Senator Janie Ward-Engelking	Representative Melissa Wintrow
Senator Mark Nye	Representative Sally Toone

LSO Staff Present: Paul Headlee, Jared Tatro, Lindsey Youtz, Jennifer Kish, and Soren Jacobsen

Roll Call: Senators Bair, Johnson, Lee, Agenbroad, Crabtree, Burtenshaw, Grow, Woodward, Nye. Representatives Youngblood, Horman, Anderson, Kauffman, Troy, Amador, Syme, Raybould, Toone.

Absent: Senator Ward-Engleking, Representative Wintrow

Meeting

On August 11, 2020, the working group met via video teleconference at 1:00 PM. Only the Co-chairs and staff were present in the Statehouse (EW42). At its meeting, the working group discussed its charge and received presentations from Paul Headlee, Manager, Legislative Services Office, Budget & Policy Analysis; and Alex Adams, Administrator, Division of Financial Management.

Information from Mr. Headlee included:

- Adjustments to fixed budgets, specifically the non-cognizable process, §67-3516(2), IC
- The three-part test for an agency to spend non-cognizable funding:
  - Must be federal or private funding
  - Must not have been known when appropriations were made
  - Must have approval of the Division of Financial Management <u>and</u> the Board of Examiners
- Attorney General legal guidance from 1992
- Flowchart of the non-cognizable process
- An 18-year history of non-cognizable expenditures from FY 2002 to FY 2019. Average of $47 million per year ($40 million per year with two outliers removed).
- FY 2020 non-cog information that included CARES Act funding, reversions, and actual expenditures

Information from Mr. Adams included:

- Details on the CARES Act that was signed into law March 27, 2020
- Funding included $1.25 billion through the Coronavirus Relief Fund (CRF) and >$300 million through dozens of pass-through programs
- The Coronavirus Financial Advisory Committee (CFAC) actions
- Demonstrated the numerous steps in the DFM application process used by state agencies pursuing non-cog funding
- The requirement of agencies to have an exit strategy (strategy for non-reliance on the federal funding) when the federal funds expire
- DFM and Board of Examiners approval processes
- Practical considerations of the non-cog process and CARES Act funding, including:
  - March 27 law signed, but funding not received until April 17
  - Six iterations of spending guidance issued by US Treasury Department between May 4 and July 31
  - Additional federal funding being considered by Congress
  - The State serves as the prime recipient of funds for local governments

Committee members asked numerous questions during each presentation regarding the non-cognizable process in general, approvals, delegation of approval by the Board of Examiners to the State Controller's Division of Statewide Accounting, historical expenditures, communication between DFM and LSO, CARES Act funding (FY 2020 reversions and FY 2021 non-cogs), and emergency declarations.

Public testimony was included on the agenda, but no one from the public signed up.

It was discussed to follow-up and address in more detail several possible legislative changes to this topic at the scheduled October fall JFAC meeting.

The meeting concluded at 2:50 PM.

67-3516. APPROPRIATION ACTS DEEMED FIXED BUDGETS — RATE OF EXPENDITURE. (1) Appropriation acts when passed by the legislature of the state of Idaho, and spending authority made thereunder, whether the appropriation is fixed or continuing, are fixed budgets beyond which state officers, departments, bureaus and institutions may not expend.

(2) Funds available to any agency from sources other than state funds, if not cognizable at the time when appropriations were made whether state fiscal liability is increased or not, must have prior approval of the administrator of the division of financial management and the board of examiners in order that funds may be expended, except those funds received under such conditions that preclude approval by the administrator of the division and/or the board of examiners. Receipts from the sale of capital outlay items and insurance claim settlements may, with the approval of the division of financial management, be included as an increase to an agency's appropriation and must be identified at an object code level. Expenditure of such receipts must be for capital outlay items, except in the case of a sale of a motor vehicle, which, notwithstanding section 67-3511(3), Idaho Code, may be transferred to operating expenditures with the approval of the division of financial management.

(3) One state agency may bill another state agency for goods and services, provided the billing agency receives prior approval in writing from the billed agency or such billing is provided for by law. This process will be known as interagency billing to which the following rules will apply:

(a) The state controller will treat interagency receipts as revenue and not classify such revenue as a reduction of the expenditures of the receiving agency. Interagency billing credits for all funds shall be deposited to the appropriate fund of that agency.

(b) Interagency receipts may be expended by the collecting agency to the extent that authority to do so has been requested and approved by the legislature through an appropriation.

(c) The agency which is billed for the goods and services shall classify, treat and account for such expenses in the same manner as if such expenses had been paid by warrant and may encumber unexpended balances to liquidate known or anticipated interagency billing expenses at the end of a fiscal year. The state controller shall provide for the method of liquidation of these encumbrances.

(4) State agencies selling goods, products, and services to another state agency must use the interagency process detailed by subsection (3) of this section. State agencies, departments and institutions may sell goods, products, and services to the public and/or other political entities. These cash receipts may be expended according to the following rules:

(a) The state controller will classify these moneys as receipts.

(b) Receipts for all funds shall be deposited to the appropriate fund of that agency.

(c) The collecting agency may expend all such receipts only to the extent that authority to do so has been requested and approved by the legislature through an appropriation, except receipts received by agencies under the circumstances cited in subsection (2) of this section.

Subsection 2

(2) Funds available to any agency from sources other than state funds, if not cognizable at the time when appropriations were made whether state fiscal liability is increased or not, must have prior approval of the administrator of the division of financial management and the board of examiners in order that funds may be expended, except those funds received under such conditions that preclude approval by the administrator of the division and/or the board of examiners.

FINANCE-APPROPRIATIONS WORKING GROUP

From: Paul Headlee, Manager, Budget & Policy Analysis, Idaho Legislative Services Office
Date: Prepared October 5, 2020 for the October 14, 2020 Working Group Meeting
Subject: How Idaho and Other States Address Non-Cognizable (Unanticipated) Federal Funding

This report provides information on how Idaho and other states address unanticipated federal funding. In Idaho this is referred to as non-cognizable funding and is authorized in Section 67-3516(2), Idaho Code. This information was compiled from responses provided to the National Conference of State Legislatures by the National Association of Legislative Fiscal Officers.

Table 1 shows that there are several degrees of legislative control over unanticipated federal funding. These range from no authority in nine states; conditional authority in 13 states, and binding authority that requires legislative approval in 12 states.

Table 2 shows how Idaho and other states address seven common components of the non-cognizable funding process. The information in this table is not intended to be a comprehensive review of all states, but rather, to provide examples that may assist members of the working group when considering alternative approaches to Idaho's process.

Table 1. Interim Control Over Unanticipated Federal Funding

General Degree of Legislative Authority	# of States
None: The executive has complete discretion over unanticipated federal funds received between legislative sessions. (AL, AZ, GA, IN, ME, MS, MT, VA, WA)	9
Advisory: A legislative board may provide advice during the interim, but lawmakers have no control over unanticipated federal funds. (AK, AR, FL, KY, MD, MA, MN, NC, TN, WI)	10
Conditional: Lawmakers defer to the executive for some spending decisions between legislative sessions. Practice may vary depending on the source, purpose or type of unanticipated federal funds received. **Idaho is in this category.** (CA, CO, CT, HI, ID, IL, IA, NH, NJ, NM, UT, WV, WY)	13
Joint: Executive and legislative branch sit together on a board and during the interim share the decision on spending unanticipated federal funds. (DE, KS, ND, OH, OK, RI)	6
Binding: The executive branch may receive but cannot spend unanticipated federal funds without prior authorization or subsequent legislative approval. (LA, MI, MO, NE, NV, NY, OR, PA, SC, SD, TX, VT)	12
Total	**50**

Table 2. Details on Idaho and Other States' Non-Cognizable Processes

Component	Idaho	Other States
1. Approving Entity / Membership	DFM and Board of Examiners (Governor, Attorney General, Secretary of State)	**Alaska's** Legislative Budget and Audit Committee can provide recommendations. **Ohio's** Controlling Board includes seven members (1 from Ex. Branch, 6 from Legislature); **Delaware's** State Clearinghouse Committee includes 10 members (6 legislators, Controller, Director of OMB, Sec. Finance, Sec. State). **Kansas** uses a State Finance Council (Gov., Speaker, Pro-Tem, +4 legislators). **North Dakota** has an Emergency Commission (Gov., Sec. of State, senate majority leaders, and chairs of House and Senate appropriation committees).
2. Powers	Increase Agency Spending Authority (but cannot appropriate)	**Louisiana** allows its Joint Budget Committee to provide an interim appropriation when not in full session but requires Governor approval. **Ohio's** Board can transfer money between funds within an agency and between agencies under certain circumstances. **Nebraska and New Jersey** use appropriation bill language to allow specific agencies to exceed their expenditure limits. **Tennessee** allows the legislature to review and hold hearings on "expansion requests" but it cannot deny funding. **Iowa** doesn't require executive branch to receive legislative approval for new federal funds.
3. Timeline for Approval	No timeline or deadline	**Florida's** Governor submits a budget amendment and legislative fiscal committees have 14 days to respond if they disapprove of spending plan; **Maryland's** legislative budget committee has up to 45 days to review requests greater than $100,000. **Wyoming** has a 10-day notice period for the legislature to review and accept federal funds in excess of $1 million.
4. Timeline of Expenditure	Interpreted to mean current FY	**Ohio** can cross fiscal years, but it uses a biennial budget cycle. **North Carolina** allows funding to be used for personnel, but on a time-limited basis.
5. Dollar Threshold or Limits on Use	None in statute, but DFM can make determinations on state commitments	**North Carolina** requires legislative consultation for grants greater than $2.5 million. **North Dakota** requires legislative approval for funds in excess of $50,000. **New Jersey** may build into an appropriation the ability to spend up to 125% of authorized levels. **Tennessee** and **Wyoming** do not have thresholds. **Utah**, **Illinois, and Massachusetts** cannot approve funding that commits the state to matching funds. **New Hampshire** does not allow unanticipated federal funds to be used for personnel costs or consultants.
6. Types of New Funding	Non-state funds	**Arizona** limits approval to only Medicaid, Child Support, and Child Welfare funding. **Hawaii's** Governor can approve receipt of Dept. of Defense funding.
7. Notification by Executive Branch to the Legislature	Included in the SCO system and budget documents	**California** requires notification to the Joint Legislative Budget Committee. **Missouri's** agencies must notify legislative fiscal staff when federal receipts exceed budget estimates. **Wyoming** requires the executive branch to report quarterly to the legislature the expenditure of unanticipated federal funds.