

To: Economic Affairs Interim Committee
From: Labor Commissioner, Keith Kelly
Date: August 19, 2010
Re: Dept. of Labor and Industry 2011 Legislation

A. Employment Relations Divisions (ERD)

1. Work Comp Act Revision Bill(s) - Labor Management Advisory Council:

The Labor Management Advisory Council, a group representing both labor and management, was formulated to study and develop solutions to address Montana's work comp crisis. After nearly three years of work, the LMAC has presented you its proposals. The Department is committed to assisting this committee and the 2011 Montana Legislature to ensure that these valuable cost-saving measures become law.

2. Revise Contractor Registration Law:

In administering its regulatory functions regarding the Contractor Registration Laws, the Department has identified changes to enhance and clarify the law. The changes will clarify that every applicant for a contractor registration have a workers' compensation policy that covers, not just employees, but the owner(s) of the business. This clarification is necessary to ensure that contractors are not obtaining the registration without coverage and then displaying the registration as proof that they are in compliance with workers' compensation laws. This proposal has no fiscal impact.

3. Clarify Wage Payment Act:

a. To clarify that independent contractors are not included in the definition of employee in parts 2 or 4, Title 39, chapter 3 as referenced in the administrative rules related to independent contractor exemption certificates and employment status determinations by the department.

b. To clarify and to harmonize the existing Montana Code Annotated 39-3-406(1)(j) with the administrative rules specifically as it relates to the reference of 29 CFR part 541.5.

c. To modify existing Montana Code Annotated 39-3-213(1) to read "may" verses "shall" when depositing wages collected on behalf of employees into the wage trust account. This change will allow the department to directly pay wage claimants upon completion of a wage claim case. These proposals have no fiscal impact.

4. Clarify Public Contracts Act:

a. To clarify within Title 18, Chapter 2, Part 4 that collective bargaining agreements used to establish prevailing wage rates must be those agreements in effect during the time period covered by the annual survey conducted by the department or provided no later than the close of the public hearing and comment period for rate setting.

b. To modify Title 18, Chapter 2, Part 4, (18-2-403) that each contractor shall ensure that at least 50% of the contractor's workers performing labor on the public works projects (excluding those partially funded with federal aid money or where preference laws are specifically prohibited by federal law) are bona fide Montana residents, as defined in 18-2-401. These proposals have no fiscal impact.

5. **Revise Montana Human Rights Act.**

a. 1997 Legislative changes to the MHRA require informal investigations to be completed in 180 days, we seek extension of this time period for 45 days for purposes of allowing the parties to engage in voluntary mediation.

b. The Bureau expends legal resources and costs to enforce orders and conciliation agreements. Allowing recovery of these costs by the agency would pay for these statutorily required enforcement actions.

c. The MHRA is inconsistent with federal Title VII which allows Indian preference on or near a reservation. The Department proposes to make the Montana statute mirror the federal statute.

d. Current MHRA language allows parties to request subpoenas from the Commissioner during the informal investigation, we propose the Bureau only be allowed to seek subpoenas during the formal investigation.

e. "Adaptive Design" is not defined in the MHRA housing statutes and is unclear and confusing and therefore should be deleted.

f. Make needed changes to the Montana Human Rights Act to restore equivalency with the federal Fair Housing Act. Equivalency status allows Montana to enter into a work sharing agreement with the federal Department of Housing and Urban Development for investigating complaints of housing discrimination. This eliminates dual state and federal investigations for housing providers. It also allows the department to receive federal payments for those investigations done under the work sharing agreement. Proposal (b) and (f) would have a minor positive fiscal impact. The remaining proposals would have no fiscal impact.

B. Work Force Services Division (WSD):

1. **Revise Workforce Investment Act:** Makes minor revisions to the Workforce Investment Act to allow Montana the flexibility to comply with mandated federal requirements. Removes references to local boards and plans and allows for one state board and plan. This proposal will have a positive fiscal impact due to decrease in board costs.

C. Board of Personnel Appeals (BOPA)

1. **Service in BOPA:** Repeal 39-31-107, MCA which requires formal process service for BOPA hearings and provide for service by mail. It is a waste of time and resources to require the Board to formally serve responding parties as all participants are from the public sector (state agencies, governmental entities, and the unions that represent government employees). This proposal will have a positive fiscal impact as it eliminates paying for formal service of process because all participants are public employees.

D. Unemployment Insurance Division:

1. Implement TUR (total unemployment rate) trigger for Extended Benefits (EB) by adopting U.S. Dept of Labor's model language. Current Montana Law only uses the IUR (insured unemployment rate) to trigger on or off. Without the TUR triggering mechanism, Montana might miss an opportunity to trigger on to extended benefits in the future because we only have the IUR trigger mechanism and not both. Federal law permits states to use either IUR or TUR or both trigger mechanisms.

a. Fiscal Impact: Possible negative impact on the UI Trust Fund if a situation occurs in which use of the TUR triggering mechanism results in Montana triggering on to Extended Benefits and use of the current IUR method does not cause Montana to trigger on to Extended Benefits. However, the unemployed citizens would benefit from the availability of additional benefits. Extended Benefits are normally 50% state funded and 50% federally funded. Currently this program is 100% federally funded.

2. Employers who fail, without good cause, to introduce information or documentation during the initial claim or redetermination process would be barred from introducing the information/documentation at the lower or higher appeal. Would reduce or prevent large benefits overpayments occurring now, by encouraging employers to provide the information at the initial or redetermination levels of the claims process.

a. Fiscal Impact: For the 2009 legislative session the Department estimated approximately 19 claims per year will have reduced claimant overpayments, averaging \$1,636 each, or total overpayment reduction and loss of repayment to the Trust Fund of \$31,084 in each year of the biennium.

3. Revise Unemployment Insurance Law:

a. New law in 23-7-3xxx (Lottery regulations) to permit UI to request an intercept or offset of Lottery winnings to repay overpaid benefits or unpaid contributions, penalties, or interest.

i. Fiscal Impact: Estimate a small increase in the collection of benefit overpayments or unpaid contributions, which will increase the Trust Fund balance. However, one state agency will not be paying money to an individual, who owes money to another state agency.

b. Revise 39-51-2204 to permit computation of an individual's maximum benefit amount (MBA) for Extended Benefits or other federal benefit programs as specified by the appropriate federal directives/public laws by using the applicable percentage of the applicable "state funded claim" MBA. Current law specifies the state process only.

i. Fiscal Impact: None. As agents of the U.S. Department of Labor, Montana is required to comply with the program directives of various federal unemployment extensions, such as Emergency Unemployment Compensation or Extended Benefits. However, some citizens have questioned why their entitlement computation differs from state UI law. The proposed language attempts to clarify the department's authority and responsibility.

c. Revise 39-51-2510 to permit the use of the specified percentage, in applicable federal legislation, to determine the Extended Benefits Maximum Benefit Amount (MBA). Current language doesn't provide for "high" extended benefits periods when 80% computation is used, only "regular" EB at 50%.

i. Fiscal Impact: None. As agents of the U.S. Department of Labor, this agency is required to comply with the directives of the Extended Benefit (EB) program when the program is in effect for Montana. The EB program has a "high" level when the state's total unemployment rate is 8% or higher. In a "high" EB period, a claimant's entitlement is 80% of the claimant's regular benefits instead of 50%. However, 39-51-2510 does not acknowledge the requirement to offer "high" EB when applicable.

d. Revise 39-51-2101 to add language that states an individual is not unemployed if he/she works 40 hours (full-time) in a week. Current language could be interpreted to permit an individual who worked 40 hours to receive partial benefits if his/her customary hours are greater than 40 hours.

i. Fiscal Impact: Positive fiscal impact to Trust Fund. Amount to be determined.

e. Revise 39-51-2111 (domestic violence) and 39-51-2302(2) (c) ordered to military service and 2302(2)(d) (quit to follow military spouse) to clarify that relief of charges applies to private experience rated employers only. Reimbursable employers currently argue that this wording means they don't have to pay for any benefits paid to former employees, which result in the loss of several thousand dollars that should be paid to the Trust Fund.

i. Fiscal Impact: Positive fiscal impact to Trust Fund. A scan completed 04/07/2010 on claims, effective January 1, 2009 through April 3, 2010 shows charges of \$44,453.31 would be paid to the Trust Fund if this proposal was enacted.

f. Remove the 10 week limit on payments to victims of domestic violence (39-51-2111) by removing paragraph 1c. SB 1740 currently in Congress would require states remove any benefit limitations that are unique to UI domestic violence claims. MT is the only state with a restriction on the number of payable weeks.

i. Fiscal impact: This proposal would result in a small negative impact to the Trust Fund. A scan of domestic violence claims effective July 1, 2009 through April 3, 2010 shows 14 claimants would be impacted by this proposal resulting in an additional \$24,161.00 would be paid from the Trust Fund. The current 10 week limitation results in some domestic violence victims to cease receiving benefits before they become reemployed. These individuals must seek assistance from other social service programs

g. Revise the wording in 39-51-1212(7). The word "payment" causes confusion because we do not relieve payments from a governmental rated entity's accounts. The wording will be revised to say: *"Benefit charges may be relieved with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages"*.

i. Fiscal Impact: None.

h. Allow the Department to seek enforcement assistance from the District Court in Unemployment Insurance cases.

i. Fiscal impact - minimal positive fiscal impact as provides more assurance in Department's ability to collect money due the Department.

i. Revise 39-51-204(2) to clarify that sole proprietors and partners etc. working for their own business are exempt from UI coverage, but the exemption does not apply to businesses who hire sole proprietors or partnerships.

i. No fiscal impact.

j. clarify that participants in the federal AmeriCorps and VISTA programs are exempt from state unemployment insurance laws.

i. No fiscal impact.

Business Standards Division:

1. Consensus Combined Board Bill:

This proposal contains all board legislation which the Department, the Board, and the interested persons (associations, etc.) all agree is necessary. This bill contains primarily housekeeping matters however, a few substantive changes that aren't anticipated to be controversial or complicated have been included as well. In addition, the included proposals will have no fiscal impact. The following are several examples of the types of issues that this consensus bill will address.

- All Licensing Boards: Remove all references requiring the department to have "received" verification from other states before issuing license and clarify that applicant must only have formally requested the verification. This proposal will dramatically reduce delay in issuing a license. No fiscal impact.

- Building Codes: Expand Reciprocity in Crane Licensing - 50-76-113, MCA has language that restricts reciprocity in crane licensing to one national organization, the National Commission for the Certification of Crane Operators (NCCCO). The department has received correspondence from stakeholders (2 different groups) that would also like to be considered for reciprocity. The department would like to add language that allows other organizations that have been approved by the department in addition to NCCCO. No fiscal impact.

- Board of Dentistry; Amend 37-4-101 and 37-4-511, MCA to update anesthesia regulations and definitions in order to reflect terms and practices currently used by the industry. The Montana Board of Dentistry has not amended or updated 37-4-511 since its inception in 1985 and the definitions in 37-4-101 do not correlate to the terms currently used by the industry and the American Dental Association guidelines. No fiscal impact.

- Remove notary requirement and require only sworn statement. The requirement still exists under 37-60-303 subsection (1) and (3) and 37-60-304 subsection (2) requires "evidence under oath" when submitting an application. If this remains in statute it will create a hindrance to online application process. No fiscal impact.

- Board of Pharmacy - Repeal 37-7-204, MCA which requires posting of prescription drug prices. This is outdated and unused language. No fiscal impact.

- Board of Medical Examiners: 37-6-302 (f) MCA, remove reference to state exam. No fiscal impact.

- Board of Professions Engineers & Land Surveyors : Amend 37-67-312 and 37-67-313, MCA to allow P.E.s and P.L.S.s with licenses in other states to more easily license via endorsement. Currently the statutes require that an out of state license holder meet standards not lower than MT in effect at the time the out of state license holder received their license in their state; this requires research to verify what the other state's laws were at the time of licensure and often delays licensure of those who are obviously qualified. There is no fiscal impact.

- Board of Professional Engineers & Land Surveyors: Amend 37-67-306(1)(2), MCA to strike "has passed examinations of a grade and character" and insert "and whose qualifications". There is no fiscal impact

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Stand Alone Board Bill:

1. Board of Real Estate Appraisers: Require out of state Appraisal Management Companies to adhere to oversight and regulations required of appraisers.

a. Appraisal Management companies (AMC's) are currently unregulated brokers of appraisal services. Financial institutions are mandated to use these brokered services to provide appraiser independence in conformity with the Home Valuation Code of Conduct (HVCC) recently adopted by Fannie Mae and Freddie Mac. The regulated financial institutions and state licensed appraisers are asked to work with these unregulated brokers of appraisal services, but there is no current regulatory authority to address concerns of unethical or fraudulent activities conducted by the AMC's.

1. There is fiscal impact