

EXHIBIT 2  
DATE 2-15-05  
HB 589

U. S. Department of Labor



Employment and Training Administration

Dallas / Denver Region IV

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February 11, 2005

Ms. Ingrid Childress  
Administrator  
Montana Dept. of Labor & Industry  
P.O. Box 1728  
Helena, MT 89624

Dear Ms. Childress,

Attached are our comments to Montana House Bill NO. 589. We appreciate you providing us the opportunity to provide our views to these important matters. Please don't hesitate to call me or Mary Lou Lofgren if you need any additional information. We can be reached at 214-767-2088.

Sincerely,

/s/

JOSEPH C. JUAREZ

Attachments (3)

cc: Sue Mohr

**Comments**  
**Draft Montana WIA Legislation of 2/1/05**

Regional staff have reviewed the proposed State legislation revising State Workforce Investment (WIA) Laws in Montana. Before making specific comments on the proposed legislation, I want to point out that WIA re-authorization remains a top priority of President Bush and his administration. WIA re-authorization would significantly change important features of the current law, upon which Montana's proposed legislation is based. Moving forward with this State legislation at a time when the federal legislation may be changing, may create the need to amend the legislation again to implement the WIA amendments and implementing regulations.

Overall, the proposed legislation appears to restrict the state's flexibility to administer WIA. Since an overarching principal of WIA is flexibility, within both the State and local area roles, placing such restrictions into State legislation instead of operating policies and procedures (where they are easier to change or adjust) reduces the ability of the Governor and state to change and adjust quickly to changing circumstances to meet the workforce needs of the businesses and citizens of Montana.

The proposed legislation also reduces or removes functions and roles of the Governor/State that are clearly spelled out in the federal legislation and the Department of Labor's regulations. WIA was carefully crafted to balance the roles of the Governor/State and the local elected officials/local boards. The proposed legislation appears to restrict the flexibility necessary for Montana to meet the needs of its businesses and citizens. Both the Governor/State and local elected officials/local boards have important functions listed in WIA. I have included some of those functions in attachment B to this letter.

The following are specific areas where the proposed state legislation appears to conflict with WIA. We would also point out that, in addition to Workforce Investment Act requirements that are cited in the legislation, there are further clarifications and interpretations contained in the WIA regulations at 20 CFR Parts 652 and 660 through 671 that are not addressed in this draft State legislation.

**Section 1 (f)** While this section of the proposed legislation declares intent, we suggest clarification to ensure that there is clear understanding of the roles of the state and local areas. If the conflicting management directives referenced here are those from the State and MJTP, please see section 661.120 (b) of the Regulations. It states that the State "should establish policies, interpretations, guidelines and definitions to implement the provisions of WIA".

The State must issue policies in order to provide guidance and direction to assist local areas in the development and implementation of WIA and One-Stop principles. The State has the authority, pursuant to section 667.120 (b), to establish these policies and procedures as long as they are not inconsistent with WIA. Local policies may also be issued, as long as they are not inconsistent with those issued by the State, as described in Section 661.120 (a) of the regulations.

**Section 2 (5)** If private sector member is a substitute for the “business” membership required on both the State and local boards, this definition goes beyond what is contained in the Act. The Act requires that a majority of members represent businesses. Section 661.315 (d) further states, “Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.”

Section 661.315 (e) of the regulations requires, “Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations.” Section 117 (b) (1) allows the State to establish additional criteria for selection of Local Board members. If the self-employed individuals referenced in this section of the draft legislation meet the criteria in Section 117 of the Act, and the further interpretation in the regulations, they would qualify.

**Section 2 (9)** This provision establishes in legislation the current local areas designated by the Governor. However, there are circumstances under which the Governor can re-designate local areas, subject to appeal, that the codification of the currently designated areas does not take into account. See section 116 of WIA, and Sections 661.250, 661.260, 661.270 and 661.280. Defining existing “workforce investment areas” in state legislation would not preclude the Governor from exercising the designation responsibilities provided in WIA.

**Section 3** Section 111 (a) of WIA gives the responsibility to the Governor for the establishment and appointment of State Workforce Investment Board members. Section 111 (h) provides that, “The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board. Board membership is described in Section 111 of the Act and further interpreted in Sections 661.200 and 661.203 of the regulations. Section 3 of the proposed State legislation appears to preempt the Governor’s role provided for in WIA. It also does not reflect all of the requirements of the Act and regulations for selecting members. For example, in Section 3 (2) (b), WIA legislation provides that the presiding officer of each state legislative chamber approve two members to the state board; party affiliation is not a requirement in federal law.

**Section 3 (4) (b)** The provision that the State board cannot vote, without a majority of the board that is present representing business, is not a requirement of WIA. Such decisions are the responsibility of the Governor and the Board and would be contained in the Board procedures or by-laws.

**Section 5** Throughout this new section, there appears to be confusion regarding the role of the local boards in relation to the state’s role.

**Section 5 (4) and (5)** These are not exclusively local board responsibilities. The state and/or the administrative entity also play a role in the activities mentioned. Although the Local Board has a variety of responsibilities, the State Plan, described in Section 112 (14) of the Act says “with respect to the one-stop delivery systems described in section 134 [c]...a description of the strategy of the state for assisting local areas in development and implementation of fully operational One-Stop delivery systems in the State.”

**Section 5 (5) (b) (i)** The statement in the draft legislation does not include the words “in partnership with the Chief Elected Official”. It also does not mention that the local plan must be submitted to the Governor. See Section 118 of the Act.

**Section 5 (5) (b)(iii)** The language in this paragraph allows the Local Board to provide direct client services and function as the One-Stop operator. A Local Board is not permitted to operate a One-Stop center and provide direct client services, unless it has the agreement of the chief elected official and the Governor. See Section 117 (f) (1)(A) and (f)(2) of the Act. Also, see quotation above which states that the State must have a strategic plan for assisting the local boards in the designation of One-Stop centers.

**Section 5 (6)** The Local Board and consortium of local elected officials may not determine that the Local Board has a waiver; waivers are issued by the Governor. The waiver request to the Governor must include the information requested in Section 117 (f) (1) (B).

**Section 5 (7)** It is not up to the Local Board to determine which individuals have access to unemployment compensation wage records. These issues are covered by federal and state legislation. I have attached separate comments on this provision previously sent to Don Gilbert.

**Section 5 (9)** The State has the authority, pursuant to section 667.120 (b), to establish policies and procedures as long as they are not inconsistent with WIA. Local policies may also be issued, as long as they are not inconsistent with those issued by the State, as described in Section 661.120 (a) of the regulations.

**Section 6 (1) and (2)** It is the responsibility of the Governor, in accordance with the state plan, and after consultation with the CEOs, to determine the allocation formula for providing WIA funds to the local areas. The formulas are described in Section 128 and 133 of WIA. For dislocated worker and youth formula funds, these sections also describe the circumstances under which the Governor can make changes to the formula. It is the Governor’s prerogative to determine how statewide funds will be disbursed to carry out the state’s responsibilities and statewide activities required or allowed under the Act. See Sections 129 and 134 of the Act.

**Section 6 (3) and (4)** Sections 129(b) and 134(a) of the Act describe the required and optional statewide activities that are authorized uses of statewide funds. Once the State reserves funds to carry out its statewide responsibilities, the State may, but is not required to, pass on additional funds to the local areas. The language in the proposed legislation preempts the State’s role.

**Section 6 (5) (b)** A State, a Local Board, or another entity in which the project is located may apply for a National Emergency Grant. It is not a requirement for the grantee, or the State if it is the grantee, to allocate the maximum amount of grant funds available to the affected local board. It is the grantee’s responsibility to ensure that adequate services are being provided to the workers being laid off. However, if the grantee, State or otherwise, chooses to allow the local board or another entity to provide those services, then the grantee is responsible for the oversight of those funds.

It is our opinion that discretionary and NEG grant applications procedures do not belong in State legislation. General grant application guidance or a solicitation of grant application provides the specific requirements needed in order to apply for any type of discretionary funding. The notice of award document dictates requirements for the expenditure of funds. The proposed legislation suggests that any grant funding (discretionary or NEG) received from the US Department of Labor and other federal agencies shall be allocated to the affected local board. That is not the case.

**Section 7 (3)** As stated in Section 662.420 of the regulations, the Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor. The designation or certification must be reviewed whenever the biennial certification of the Local Board is made under Section 663.300 (a) of the regulations and WIA sec. 117 (f)(2).

**Section 7 (4)** Section 652.216 of the regulations allows for arrangements regarding functional authority over W-P staff. It states, "the One-Stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a One-Stop setting. As part of the local Memorandum of Understanding, the State agency, as a One-Stop partner, may agree to have staff receive guidance from the One-Stop operator." These arrangements need to be negotiated and spelled out between the State agency and the Local Board, since the state is the Wagner-Peyser grantee.

**Section 9 (5)** There appears to be confidentiality issues involved in sharing this information, and would likely require an agreement between the State and Local Board.

## State and Local Roles Under WIA

### Governor/State

- Establishment and staffing of a State Workforce Investment Board to develop a comprehensive State plan for all workforce investment activities, and to oversee the operation of the workforce investment system;
- Submittal to the Secretary of Labor of a single State plan that outlines a five-year strategy for the statewide workforce investment system;
- Negotiation of State performance goals for core indicators and a customer satisfaction indicator with the Secretary of Labor for the first three years of the State plan, and to negotiate performance levels for each local area with local boards and chief elected officials;
- Designation of workforce areas after consultation with the State board, local elected officials, and the public, and certification every two years of a business-lead, workforce investment board for each designated local area;
- Development of a formula for allocating funds to local workforce areas;
- Establishment of procedures to be used by local boards for certifying initial training provider eligibility for providers not certified under the higher Education Act or National Apprenticeship Act, and procedures for continuing eligibility of all providers;
- Establishment and operation of a fiscal and management accountability information system; and
- Annual on-site monitoring of each local area within the State to ensure compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the entity receiving the funds.

### Local Elected Officials/Local Boards

- Develop and submit a local plan to the Governor;
- Designate or certify One-Stop operators;
- Identify eligible youth training providers;
- Assist the Governor in developing a State-wide employment statistics system;
- Negotiate local performance measures with the Governor;
- Develop and enter into memoranda of understanding with all One-Stop partners;
- Conduct oversight of the One-Stop system in the local area; and
- Identify and certify eligible training providers from the local areas for inclusion on the State-wide eligible training provider list.

## UI Disclosure Requirements

As requested, the following are comments on draft language contained in Section 5 of discussion draft LC266 related to new subsection (7) that relates to the disclosure of UC information to employees who work for the One-Stop delivery system. As we discussed, you presume that the draft language is intended to authorize the disclosure of UC information for services and performance administered for programs funded by WIA instead of the Social Security Act as the draft language states. Therefore, our comments are based on this presumption and suggest that the language be revised to clarify what the intent of the disclosure of UC information is for and ensure that it meets federal law requirements.

Section 136(f), WIA, requires states to use quarterly wage records, "consistent with State law," in measuring the progress of the state on state and local performance measures. States must follow the requirements listed below on safeguards, agreements, and reimbursement of costs UI information disclosures.

- Federal UC grants may not pay for any costs of disclosure.
- Safeguards must assure that only the appropriate requesting agency obtains UC data and that the requesting agency does not improperly re-disclose the data.
- The UC agency must enter into an agreement with the requesting agency to assure that the above conditions are satisfied.
- The UC agency is not required to obtain additional information.

We believe that Section 39-51-603(3), MCA, facilitates the release of UC wage information to public officials and provides for the disclosure of UC information for WIA purposes.

In addition, states may disclose information concerning individuals to a public official in the performance of public duties or for purposes necessary for the proper administration of the law administered or enforced by those officials. DOL's position is that a "public official" includes only public officials in the executive branch of federal, state or local government. In addition, "in performance of public duties" is specifically defined as meaning that disclosed information may be used solely for official business in connection with a law being administered or enforced by such public officials.

UIPL No. 21-99 contains the mandatory requirements for the release of UC information for WIA purposes.