

# Montana State Legislature

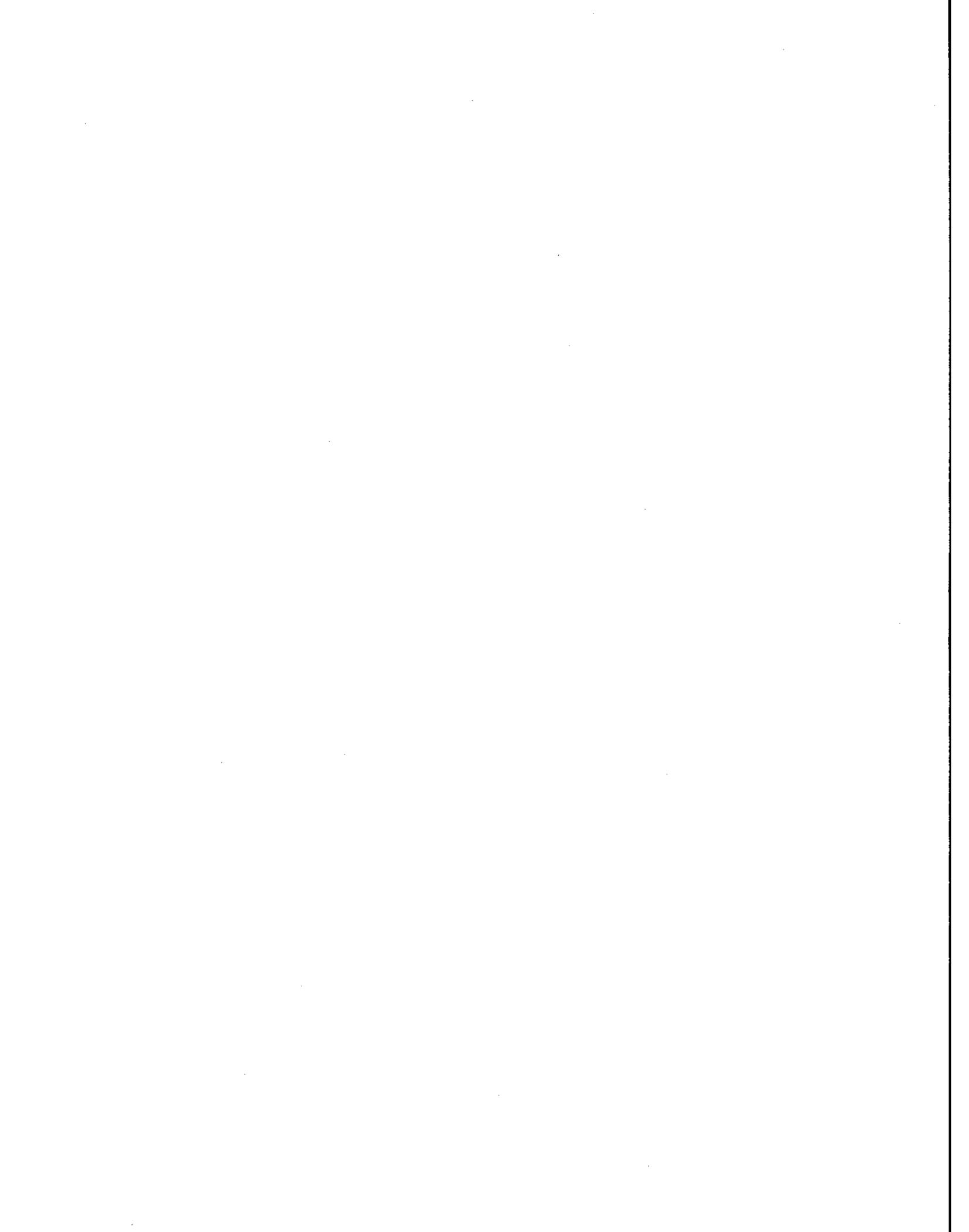
**Exhibit Number:**

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February 11, 2005

Response regarding U.S. DOL Dallas Regional Offices comments on Draft Montana HB 589.

The Workforce Investment Act (P.L. 105-220) allows for the State Legislature to enact legislation regarding requirements for implementation of WIA in Section 191:

SEC. 191. STATE LEGISLATIVE AUTHORITY.

(a) Authority of State Legislature. - Nothing in this title shall be interpreted to preclude the enactment of State legislation providing for the implementation, consistent with the provisions of this title, of the activities assisted under this title. Any funds received by a State under this title shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under this title.

(b) Interstate Compacts and Cooperative Agreements. - In the event that compliance with provisions of this title would be enhanced by compacts and cooperative agreements between States, the consent of Congress is given to States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

Additionally, WIA Regulations (20 CFR Part 652 et al) in the Supplementary Information preable to the regulations on page 49298, 3<sup>rd</sup> column, under Subpart A – General Governance Provisions states:

Section 661.120 provides authority to State and Local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA, these regulations, and Federal statutes and regulations governing One-Stop partner programs. The reference to Federal statutes and regulations governing One-Stop partner programs has been added to Sec. 661.120 (a) and (b) as a reminder that State and local administration of the One-Stop system must be consistent with the requirements of the Federal law applicable to the partner's program. In the case of local governments such policies, interpretation, guidelines and definitions may not be inconsistent with State policies. This section has also been revised to correct an inconsistency between terms used in the question and answer. The question refers to "Local and State governmental partners" while the answer refers to Local and State Boards. We do not intend to exclude the Governors and local elective officials from the authority to develop State and local policies relating to WIA title I, provided those policies are consistent with the Act, regulations and, where appropriate, other State policies. Therefore, paragraphs (a) and (b) are revised to replace the phrases "Local Boards" and "State Boards" with "Local areas" and "States"

respectively so that they will not appear to be inconsistent with the terms used in the question.

Many of the comments by U.S. DOL seem to be intimating that the Montana Department of Labor and Industry is the State of Montana and that the State Legislature and the Governor are not.

Comments  
Draft Montana WIA Legislation of 2/1/05

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.

Doesn't say "conflicts with" without the qualifier.

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.

Referenced Section Language:

Section 1: Legislative findings and intent:

- (f) efficiently provides ~~services to guarantee maximum impacts~~ local flexibility and integration, allowing localities to build on existing reforms, and provides for unified planning intended to free local groups from conflicting management directives and allow for local innovations.

Response: The phrase "free local groups from conflicting management directives" seems to be the issue.

Suggested action: remove the phrase.

SECTION 2 IS DEFINITIONS:

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.

Referenced Language says:

(5) "Private sector member" means a member who is representing the private sector, as provided for in 53-2-1204, and who is subject to the provisions of section 117 of the Act, 29 U.S.C. 2832, for the purposes of appointments to local boards. The term includes a person who is self-employed, including as a consultant, and a person engaged in agricultural and ranch production or related activities.

Response: As stated in the paragraph 2 of US DOL's entry. Section 117(b)(1) allows the State to establish additional criteria for selection Local Board Members.

Suggested Action: Leave item (5) as is, this is the State establishing additional criteria.

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.

Referenced Language says:

(6)(9) "Workforce investment area" means a the local concentrated employment program workforce investment area and the balance of state workforce investment area designated by the governor in accordance with section 116 of the Act, (29 U.S.C. 2831)."

Response: U. S. DOL's response is correct, codification of the existing local workforce investment areas would not preclude the Governor from exercising the designation options included in WIA.

Suggested Action:

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.

Referenced Language says:

Section 3. Section 53-2-1203, MCA, is amended to read:

"53-2-1203. State workforce investment board -- membership -- duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to

youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop ~~centers~~ operators, including but not limited to:

- (A) the department of labor and industry;
  - (B) the department of public health and human services;
  - (C) the office of the commissioner of higher education; and
  - (D) the office of public instruction; and
- (vii) other representatives that the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act, (29 U.S.C. 2821).

(4) (a) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(b) With respect to any issue on which the state board votes, the individuals described in subsection (2)(c)(i) must constitute a majority of those voting.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111(d) of the Act, (29 U.S.C. 2821)."

Response: Section 3 is the existing State Statute with only two proposed changes. The change to section (2)(c)(vi) is a suggested changing from "centers" to "operators" to more correctly reflect responsibilities under the law.

The second change, the inclusion of item (4)(b) requiring that private sector business representative constitute the majority on any given vote, was to foster a business driven workforce investment system as envisioned by WIA.

Additionally, other states have adopted this requirement.

Suggested Action: No change, items are not inconsistent with WIA intent.