

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Keith Kelly, Commissioner
Department of Labor and Industry
January 11, 2005

Madam Chair, members of the committee, for the record my name is Keith Kelly. I am the Commissioner of the Department of Labor and Industry. On behalf of this Administration I rise in support of Senate Bill 108. This bill is a result of an interim study requested in SB 270 of the 2003 Legislature. SB 270 directed the Commissioner of Labor to appoint and provide staff for an advisory committee to study the issues related to exemptions of independent contractors from coverage under the Workers' Compensation Act. The Department of Labor was directed to periodically report the findings and progress of the advisory committee, including any recommendations for proposed legislation, to the Economic Affairs Interim Committee. SB 108 is the result of that extensive study and collaborative effort of a broad range of interests in this issue.

Madam Chair, with your permission, I would like to distribute a sheet listing the members of the Advisory Committee. This group met for a total of five (5) day long meetings over the course of 1 year to study the issues relating to independent contractors. The Advisory Committee members reached consensus on recommendations for proposed legislation and presented those recommendations to the economic affairs interim committee meeting on September 7, 2004. The Economic Affairs Interim Committee unanimously approved recommending the proposed legislation as a committee bill. SB 108 is the product of this process.

It is fortunate that the 2003 legislature requested this study because shortly after the 2003 Legislature adjourned, the Montana Supreme Court issued it's decision in a case with major implications for independent contractors, Wild v. Fregein Construction. The Court held that the independent contractor exemption certificate issued by the Department is not conclusive as to the status of a worker as an independent contractor. What was viewed during the 2003 session as an issue relating to potential fraud and abuse leading to an uneven playing field suddenly took on greater urgency. Everyone involved, prime contractors, sub-contractors, workers' compensation insurers, unions representing employees in the construction industry and the independent contractors themselves want to be confident there is certainty and fairness in the designation of who is an employee and who is an independent contractor.

SB 108 is a consensus recommendation of the Advisory Committee members to address this important policy issue. I urge your support for the bill.