

*Tabled in Senate B & L
in 2009 Session*

SB 494
 SUBJECT NO. 3
 DATE 1/31/11
 SB 196



Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill # SB0494

Title: Address bullying in the workplace

Primary Sponsor: Windy Boy, Jonathan

Status: As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
State Special Revenue	\$96,050	\$92,650	\$75,491	\$77,379
Revenue:				
State Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	\$0	\$0	\$0	\$0

Description of fiscal impact:

By adding several protected classes who may request remedies via governmental processes, the workload for the department increases by 1.00 FTE and associated costs in the Labor Standards Bureau plus the added workload for the citizen-member Board of Personnel Appeals.

FISCAL ANALYSIS

Assumptions:

Department of Labor and Industry:

1. The scope of this bill does not affect the Wrongful Discharge from Employment Act (Title 39, chapter 2, part 9, MCA), the Workers' Compensation Act (Title 39, chapter 71, MCA), nor the Human Rights Act and Governmental Code of Fair Practices Act (Title 49, chapters 2 and 3, MCA).
2. Section 3 of HB 494 adds at least 7 additional undefined protected classes: veteran status, citizenship status, political affiliation, family responsibilities, personal appearance, and sexual orientation.
3. These 7 classes could increase the phone calls to the Labor Standards Bureau (LSB) minimally by 6,000 inquiries.
4. One compliance technician and related costs would be required to handle these extra inquiries = \$44,505 plus the one-time-only costs of computer, telephone, and office furniture of \$3,400.
5. Ongoing operating costs for data network, phone services, and agency indirect costs is estimated to be \$5,555 per year.

Fiscal Note Request – As Introduced

(continued)

6. The department assumes attorney time at approximately 4 hours per week for a total of 200 hours per year for the 2011 biennium to advise agency staff on interpreting, administering, and applying the Act and responding to specific inquiries of fact pattern questions posed by Montana employers and employees. 200 X \$95 per hour = \$19,000.
7. Currently the Board of Personnel Appeals has a budget for 5 board members to meet 25 days a year. They typically meet once a month for 2 days plus travel time.
8. The Board of Personnel Appeals would hear an additional 600 cases a year.
9. It would take an additional 35 meeting days for the 5 board members to hear the complaints.
10. The Board of Personnel Appeals would meet for one week each month. Each board member is entitled to \$50 per diem each day. One board member will be from Helena. Four board members would be paid travel expenses to come to Helena. Total for Board of Personnel Appeals is \$23,590. ([\$50 per diem x 5 board members x 35 days = \$8,750] + [\$23 meal allowance x 4 board members x 35 days = \$3,220] + [\$83 lodging allowance x 4 board members x 35 days = \$11,620].
11. The state special revenue account (Employment Security Account, 02258) would fund the “Healthy and Safe Workplace Act”.
12. A 2.5% inflation factor applied to 2013 Biennium expenses.

	<u>FY 2010</u> <u>Difference</u>	<u>FY 2011</u> <u>Difference</u>	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$53,255	\$53,255	\$54,586	\$55,951
Operating Expenses	\$42,795	\$39,395	\$20,905	\$21,428
TOTAL Expenditures	<u>\$96,050</u>	<u>\$92,650</u>	<u>\$75,491</u>	<u>\$77,379</u>
<u>Funding of Expenditures:</u>				
State Special Revenue (02)	\$96,050	\$92,650	\$75,491	\$77,379
TOTAL Funding of Exp.	<u>\$96,050</u>	<u>\$92,650</u>	<u>\$75,491</u>	<u>\$77,379</u>
<u>Revenues:</u>				
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
State Special Revenue (02)	(\$96,050)	(\$92,650)	(\$75,491)	(\$77,379)

Technical Notes:

1. The bill does not address a statute of limitations. Once SB 494 became law, a complaint of any age could have the possibility of a BPOA hearing and/or a court jurisdiction.
2. The bill doesn't define these additional protected classes.
3. The potential to increase the civil actions in district courts is high and the burden would fall on the court system.
4. Although the bill provides an opportunity for a hearing to be held by the Board of Personnel Appeals, the bill does not identify what relief (if any) can be granted by the Board of Personnel Appeals following a hearing.

5. Pursuant to Section 6, the workplace behaviors prohibited by the Healthy and Safe Workplace Act ("the Act") are not already prohibited by the provisions of Title 49, chapters 2 and 3, MCA (the Montana Human Rights Act and the Governmental Code of Fair Practices).
6. Workplace behaviors which trigger an allegation of a hostile workplace environment will likely also trigger a formal complaint under Title 49, chapter 2 and/or chapter 3, MCA, and perhaps also under federal anti-discrimination laws.
7. Because no monetary damages are provided for under the Act, employees allegedly aggrieved by a hostile workplace environment will continue to allege violations of Title 49, chapters 2 and/or 3 at the same rate as under current law.
8. The timelines for resolution of disputes regarding workplace behaviors alleged to be causing a hostile workplace environment are such that actions may proceed simultaneously under the Act and under Title 49, chapters 2 and 3, MCA.
9. There is no unified process to determine whether particular workplace behaviors fall under the ambit of the Act, as opposed to Title 49, chapters 2 and/or 3, MCA. Disputes arising under the Act will be initially heard by the Board of Personnel Appeals, whereas disputes arising under Title 49, chapters 2 and 3, MCA, are initially heard by the Department of Labor and Industry, and appealed to the Human Rights Commission.
10. Neither the Board of Personnel Appeals nor the Department of Labor and Industry is granted rulemaking authority with respect to the substantive provisions of the Act. The Board of Personnel Appeals has existing rulemaking authority to establish procedural rules for matters which come before the Board.

Sponsor's Initials

Date

Budget Director's Initials

Date