

# Legislative Audit Division

State of Montana



Report to the Legislature

October 2003

## Financial-Compliance Audit For the Fiscal Year Ended June 30, 2003

### Department of Labor and Industry

This report contains five recommendations. Issues addressed in the report include:

- ▶ Noncompliance with state laws, including adopting administrative rules, and setting fees commensurate with costs.

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## FINANCIAL-COMPLIANCE AUDITS

Financial-compliance audits are conducted by the Legislative Audit Division to determine if an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States General Accounting Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) certificates.

Government Auditing Standards, the Single Audit Act Amendments of 1996 and OMB Circular A-133 require the auditor to issue certain financial, internal control, and compliance reports. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 2003, will be issued by March 31, 2004. The Single Audit Report for the two fiscal years ended June 30, 2001, was issued on March 26, 2002. Copies of the Single Audit Report can be obtained by contacting:

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October 2003

The Legislative Audit Committee  
of the Montana State Legislature:

This is our financial-compliance audit report on the Department of Labor and Industry for the fiscal year ended June 30, 2003. We performed a one-year audit to improve coordination of financial-compliance audits with the state's single audit on behalf of federal grantor agencies. Our report contains five recommendations concerning professional licensing laws, adopting administrative rules, and state compliance.

We thank the Commissioner and department staff for their assistance and cooperation during the audit.

Respectfully submitted,

*Signature on File*

Scott A. Seecat  
Legislative Auditor



# **Legislative Audit Division**

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**Financial-Compliance Audit**

**For the Fiscal Year Ended June 30, 2003**

## **Department of Labor and Industry**

Members of the audit staff involved in this audit were Angie Lang, Jim Manning, Laura L. Norris, Jennifer Solem, and Jeff Tamblyn.



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## Appointed and Administrative Officials

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### Department of Labor and Industry

Wendy Keating	Commissioner
Jim Brown	Administrator Business Standards Division
Jerry Keck	Administrator Employment Relations Division
Ingrid Childress	Administrator Workforce Services Division
Tammy Peterson	Administrator Centralized Services Division
Keith Kelly	Administrator Unemployment Insurance Division
Mike McCarter	Judge Workers' Compensation Court
Steve Nelson	Administrator Office of Community Services

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**Department of Labor and Industry**

This report documents the issues noted during our financial compliance audit of the Department of Labor and Industry (department) for the fiscal year ended June 30, 2003. The previous audit report contained ten recommendations. The department implemented eight, partially implemented one, and did not implement one recommendation. This report contains five recommendations directed to the department.

We issued an unqualified opinion on the financial schedules presented in this report. This means the reader can rely on the presented financial information and the supporting detailed information on the primary accounting records.

The listing below serves as a means of summarizing the recommendations contained in the report, the department's response thereto, and a reference to the supporting comments.

Recommendation #1

We recommend the department implement procedures to:

- A. Identify laws impacting department operations.
- B. Coordinate and fix responsibility for state compliance.
- C. Improve management oversight to ensure and facilitate compliance with state laws..... 12

Department Response: Conditionally Concur. See page B-4.

Recommendation #2

We recommend the department implement procedures to ensure that the boards and licensing programs adopt administrative rules as required by state law..... 14

Department Response: Concur. See page B-6.

Recommendation #3

We recommend that the department and its licensing boards ensure that fees are commensurate with costs, as required by

## Report Summary

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state law, and cash balances do not exceed the amounts  
allowed by state law..... 16

Department Response: Concur. See page B-7.

### Recommendation #4

We recommend the department instruct the Department of  
Revenue to deposit collections from offsets for benefit  
overpayments in the clearing account as required by state  
law. .... 17

Department Response: Concur. See page B-7.

### Recommendation #5

We recommend that the department monitor its revenue  
estimates to ensure that errors in the estimates are corrected. .... 18

Department Response: Concur. See page B-7.

# Introduction

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## Introduction

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We performed a financial-compliance audit of the Department of Labor and Industry (department) for the fiscal year ended June 30, 2003. The objectives of the audit were to:

1. Determine department compliance with applicable laws and regulations.
2. Make recommendations for improvements in the management and internal controls of the department.
3. Determine if the financial schedules present fairly the results of operations of the department for the fiscal year ended June 30, 2003.
4. Determine the implementation status of prior audit recommendations.

This report contains five recommendations to the department. In accordance with section 5-13-307, MCA, we analyzed and disclosed, if significant, the costs of implementing the recommendations made in this report. Other areas of concern deemed not to have a significant effect on the successful operations of the department are not specifically included in the report, but have been discussed with management.

As required by section 17-8-101(6), MCA, we analyzed the reasonableness of Internal Service Fund rates charged and fund equity balances at the department. The statute requires fees and charges for services be based upon commensurate costs. We found the rates were commensurate with costs for the activities in the Internal Service Fund in fiscal year 2003.

## Background

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The Department of Labor and Industry operates as part of a national employment, unemployment insurance benefits, and training system that assists individuals in preparing for and finding jobs. The department assists employers in finding workers and pays workers unemployment benefits if they are temporarily unemployed through no fault of their own.

## Introduction

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The department enforces state and federal labor, state wage and hour, workers' compensation, discrimination, and state and federal health-safety laws. In addition, the department conducts research, collects statistics, and provides adjudicative services in labor-management disputes. The department also administers building codes enforcement, weights and measures, and professional and occupational licensing.

The department is organized into five divisions, five administratively attached units, and the Commissioner's Office. A brief description of the divisions and administratively attached units with their Full-Time Equivalent (FTE) follows:

Commissioner's Office, Office of Legal Services and Office of Human Resources (27 FTE) - The Commissioner's Office provides administrative and support services to the department. It is responsible for the overall administration of the department, including direction and program focus. The Office of Legal Services provides legal services for the department and staffs administratively attached boards and commissions. The Office of Human Resources provides personnel-related services to the department.

Centralized Services Division (41.5 FTE) - Centralized Services provides central services including payroll, accounting, purchasing, budgeting, and computer and general services. It provides administrative hearing and dispute resolution services.

Employment Relations Division (116.5 FTE) - Employment Relations administers and enforces federal and state statutes related to wage and hours, labor relations, workers' compensation, workplace safety, contractor registration, and human rights.

Unemployment Insurance Division (123.5 FTE) - Unemployment Insurance administers the state's unemployment insurance laws and related federal programs. The division operates through the Administrative, Benefits, Program Support, and Telephone Claims Bureaus.

Workforce Services Division (389.10 FTE) - Workforce Services administers and operates employment, training, and re-training programs including the local job service offices. It collects, analyzes, and disseminates employment statistics, provides services to veterans and dislocated workers, and offers trade adjustment assistance to individuals affected by the North American Free Trade Agreement.

Business Standards Division (147.53) - Business Standards oversees professional and occupational licensing, weights and measures, and building codes administration.

Administratively attached units include:

Workers' Compensation Court (5 FTE) - The court provides a legal forum for Montana's employees and the insurance industry to resolve disputes arising out of work-related injuries and occupational disease.

Human Rights Commission (5 Board Members) - The commission hears appeals of regulatory action under the Montana Human Rights Act and the Governmental Code of Fair Practices.

Board of Labor Appeals (3 Board Members) - The board hears disputes concerning the administration of Montana unemployment insurance laws.

Board of Personnel Appeals (5 Board Members) - The board mediates collective bargaining disputes between public employees and employers.

Office of Community Services (4 FTE) – The office provides administration of the federal Corporation for National Service programs (Ameri Corps and Campus Corps) and community service and volunteer efforts statewide.

## Introduction

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### Unemployment Insurance

The department administers the state's unemployment insurance fund. The state law which establishes the fund coordinates with federal unemployment law. State law sets the methodology for calculating employer premiums, determining unemployment benefits, and maintaining funds to finance the program. Unemployment insurance activity is recorded on the state's accounting records in the Enterprise Fund.

Under section 39-51-301(5), MCA, the department delegates responsibility for billing and collecting employer premiums, including rating the loss experience of employers and calculating the premiums, to the Department of Revenue. Section 39-51-402, MCA, directs deposit of unemployment insurance premiums in a bank account called the "clearing account," then it requires transfer of the collections to Montana's Unemployment Trust Fund account in the United States Treasury. To pay unemployment benefits, the department draws funds from the state's account in the U.S. Treasury and deposits the funds in another bank account called the "benefits account." Unemployment benefits are paid from this account. In addition to paying benefits for employees of covered employers, the department also pays benefits to qualifying former employees of federal and military organizations. The department bills the federal government for these benefits and receives reimbursement to the state's account in the Unemployment Trust Fund. The federal government also provides grant funds to defray costs of administering the unemployment insurance program. The amounts available for administration are determined on a formula basis and spent as appropriated by the legislature.

In addition to the unemployment activity in the Enterprise Fund, section 39-51-404(4), MCA, sets an assessment on taxable wages paid by employers for administrative expenses. The assessments are deposited in the employment security account in the State Special Revenue Fund and are appropriated by the legislature to finance various employment-related programs.

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### **Prior Audit Recommendations**

The prior financial-compliance audit of the Department of Labor and Industry for the two fiscal years ended June 30, 2002, contained ten recommendations. The department implemented eight, partially implemented one, and did not implement one recommendation.

The prior financial-compliance audit of the Department of Commerce for the two fiscal years ended June 30, 2001, included two recommendations related to professional and occupational licensing functions transferred to the department. The department implemented one recommendation and partially implemented one recommendation.

The two partially implemented recommendations relate to administrative rules and are discussed on page 12.

The recommendation not implemented deals with depositing overpayment collections and is discussed again in this report on page 16.



# Findings and Recommendations

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## State Compliance

During the audit of the department, we tested laws related to the department and the administratively attached licensing boards and programs in the Health Care Licensing Bureau and the Business and Occupational Licensing Bureau. Our findings and recommendations for improvements are discussed in the following sections.

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## Contractor Registration and Independent Contractor Exemptions

Contractors are required to register with the department. The department will also approve independent contractor exemptions from the Workers Compensation Act. The contractor registration and the independent contractor exemption can be applied for separately for \$70 and \$25, respectively, or they can be applied for together for a total cost not to exceed \$70, under section 39-9-206, MCA.

Department personnel determined that if a contractor turned in an application for both services they would allocate \$25 to the independent contractor exemption and \$45 to the contractor registration. They reached this decision because the Independent Contractor Exemption Fund was not collecting enough revenue to cover its expenses, while it was still processing the independent contractor exemptions. At the same time the Contractor Registration Fund had sufficient revenue and an increasing cash balance. In fiscal year 2003 the department transferred \$194,200 from the Contractor Registration Fund to the Independent Contractor Exemption Fund. However, there is no provision in state law which would allow the department to transfer any money to fund the independent contractor exemption.

Section 39-9-206(4), MCA, states the fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and the enforcement of the Contractor Registration Chapter. The independent contractor exemption fee of \$25 is separately established under section 39-71-401, MCA, and must be deposited in the Workers' Compensation Administration Fund established under section

## Findings and Recommendations

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39-71-201, MCA. In order to transfer \$25 of the joint registration fee, the department would have to seek authority in state law.

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### Reporting Independent Contractor Exemptions

Section 39-51-604, MCA, states “An exemption granted under 39-71-401(3) by the department that a particular employee is an independent contractor or that a particular employment is exempt from the provisions of this chapter must be reported to the state compensation insurance fund.” The department is not reporting the contractor exemptions as required by statute. The law falls under the Unemployment Insurance (UI) statutes. The Employment Relations Division (ERD) approves the independent contractor exemptions. ERD personnel were not aware of the UI statute. There were approximately 8,500 independent contractor exemptions in fiscal year 2003. The department did not report these to the state compensation insurance fund (State Fund). Department officials stated they do provide information when it is specifically requested by the State Fund.

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### Subsequent Injury Fund

The department is responsible for operating the Subsequent Injury Fund which provides insurance coverage for disabled persons. Each year, the department charges a fee to employers who self-insure for workers compensation and insurance carriers who provide workers compensation insurance, including the State Fund. Section 39-71-915(2), MCA, states “The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income.” “Income” is not defined in state law, however, it is addressed in state accounting policy.

During fiscal year 2003 the department assessed a total of \$64,399. This analysis included all administration expenses and paid losses. However it did not include all income. The department excluded \$42,861 of unrealized investment income (Investment Appreciation). Had the department included this income as required by statute, the assessment to the insurance companies and self-insured employers would have been \$21,538. The department assessment was three times higher than it should have been.

## Findings and Recommendations

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Department personnel stated that the unrealized Investment Appreciation was not available for expenditures. Since the department had not received the investment income in the form of cash, department personnel thought it was wrong to reflect that amount in determining the assessment. The law existed prior to the department recording unrealized investment income in accordance with state policy. The department should seek legislation to amend or clarify the law.

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### Apprenticeship Program

Section 39-6-106(1)(h), MCA, states that apprenticeship agreements entered into by the department shall contain a provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility. The department has a standard agreement that does not include the required language. Department personnel currently allow apprenticeship programs to transfer from one employer to another. The agreements do state that students can transfer credits, but do not address the employer transfer provision. Department staff thought the department fulfilled the statutory requirements because the agreements state students can transfer the credits.

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### Building Codes

Section 50-60-116(2), MCA, states the Building Codes Education Program must be funded entirely from building fee revenue collected by the department, and the department shall allocate 0.5 percent of the fees that the department collects related to the inspection of plans and specifications and for the inspection of buildings. The department collected \$903,440 for building permit plan reviews and \$169,131 for inspection and operating certificates. It did not allocate any of its building code fees to the Building Codes Education Program, when it should have allocated \$5,363 to this program. This statute was transferred with the Building Codes Division from the Department of Commerce during reorganization.

## **Findings and Recommendations**

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### **Auctioneers and Auction Sales Enforcement**

Section 30-11-515, MCA, requires the department and county attorney to enforce the Auctioneers and Auction Sales statutes. The department was not aware that it was responsible for this state law. The department attorney stated the department receives very few inquiries relating to these statutes. When he does, he advises the person to contact the county attorney.

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### **Board of Nursing**

The Board of Nursing is responsible for licensing Licensed Practical Nurses (LPN). During fiscal year 2003 the Board of Nursing did not refund any LPN application fees. The LPN application states that the fee paid to the Board of Nursing is non-refundable, which conflicts with section 37-8-418, MCA, which states that the fee shall be returned to the applicant if the application is withdrawn not later than five days prior to the date of examination or the final submission to the board of an application for endorsement without examination.

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### **Board of Private Security Patrol Officers and Investigators**

Section 37-60-302(1), MCA, requires non-residents applying for a private investigator license to appoint a qualifying agent and resident manager. Department personnel stated this is too expensive and unnecessary for the individual so they do not require non-resident investigators to appoint a resident manager and agent. Also under this statute, the board is to receive notification of any changes by certified mail. The board does not require notification by certified mail. Department personnel stated it is not necessary with the capabilities of e-mail. They accept notification by e-mail or regular mail.

Section 37-60-304(3), MCA, requires that the board send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the application is to be located that an application has been submitted. Department personnel stated the board and the local authorities decided the notification was not necessary and the board would not complete the notification. Department personnel further stated the board was aware of these instances and plans to seek legislation to amend the statute in the 2005 Legislative Session.

## Findings and Recommendations

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### Board of Cosmetologists

The governor appoints the members of the Board of Cosmetologists. Section 2-15-1747(3), MCA, states that no more than two members of the board may be members of, or affiliated with, schools of cosmetology. The board currently has three members who are affiliated with, or have a financial interest in, schools of cosmetology.

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### Summary

The instances of noncompliance noted in the preceding sections are the result of several issues. The transfer of some functions from the Department of Commerce to the department in 2001 resulted in some confusion or misunderstanding of the statutory requirements related to some of the functions transferred. This may have been a result of inadequate communication or in-depth knowledge of the various statutory requirements. Turnover of staff may also have been a contributing factor in some instances.

Department officials explained during the last two years, the Business Standards Division has made efforts to bring the boards into compliance with state laws and with the adoption of administrative rules. The administrative rule process is lengthy. Many of the boards meet quarterly or less often. According to the department, this increases the risk of noncompliance and rules not being adopted in a timely manner.

The instances of noncompliance noted in the previous sections, as well as the instances where the department needs to adopt administrative rules in accordance with state laws, which are discussed in the following section, indicate the department can improve procedures to ensure compliance with state laws. These procedures could include improved communications, developing a checklist of all applicable laws, training regarding specific legal requirements, coordination of responsibilities within the department to clarify which unit or function is responsible for specific compliance elements, and management oversight to ensure and facilitate compliance. In some instances the department may want to seek legislation to clarify or amend specific laws.

## Findings and Recommendations

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### **Recommendation #1**

**We recommend the department implement procedures to:**

- A. Identify laws impacting department operations.**
- B. Coordinate and fix responsibility for state compliance.**
- C. Improve management oversight to ensure and facilitate compliance with state laws.**

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### **Administrative Rules of Montana (ARMs)**

Many state laws contain provisions requiring the department/boards adopt rules, in accordance with the Montana Administrative Procedures Act, necessary for implementation, administration, enforcement, or other actions specified in statutes. The following discusses instances noted where the department/board has not adopted or implemented ARMs in accordance with state laws.

The last two audits covering the Business and Occupational Licensing Boards (Department of Commerce and Department of Labor and Industry) had recommendations related to the adoption of ARMs. During the current audit we determined the department has not yet formally adopted ARMs for the items discussed in the prior audit reports. These relate to:

- a. the Board of Chiropractors setting the form and display of the license as required by section 37-12-201(3)(d), MCA;
- b. the Board of Funeral Services defining potentially hazardous implant in a human body as required by section 37-19-705(3), MCA;
- c. the Board of Funeral Services setting the fee for a cemetery examination or audit fee as required by section 37-19-808(1), MCA;
- d. the Board of Athletics labeling a match as Championship Match as required by section 23-3-405(2)(b), MCA; and
- e. the Board of Athletics for the issuance, renewal, and suspension of licenses, and the qualification requirements for those to be licensed to conduct matches or exhibitions, or be licensed as

## Findings and Recommendations

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referees, managers, or judges as required by section 23-3-405(2)(a), MCA.

These ARMs were not adopted for a variety of reasons, such as board meetings being cancelled and the discussion of ARMs not being added to the board meeting agenda. The department has drafted ARMs to address some of the above issues. These draft ARMs are scheduled to go before the respective boards in September and October 2003.

During the current audit we noted additional instances where the department has not adopted ARMs in accordance with state laws.

- ▶ Private Security Patrol Officers and Investigators Board. During the last fiscal year the board received a new administrator. During that process department personnel noted that some ARMs had not been adopted. They are in the process of updating and drafting ARMs to address the following issues as required by section 37-60-202(4), (5), MCA.
  - a. the board shall adopt and enforce rules for the certification of private investigator and private security guard training programs, and
  - b. the board shall adopt and enforce rules prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices.
  - c. The board is also required to adopt rules for the maintenance of records and allowing the public to inspect these records under sections 37-60-201 and 37-60-202(6), MCA.
- ▶ Board of Cosmetologists – Section 37-31-302(3), MCA, requires a license to operate or manage a salon, and section 37-31-203(3), MCA, requires the board to prescribe rules for the qualification and registration of applicants for manager-operator licenses. The board does not require a license for a manager-operator.
- ▶ Natural Resource Workers' Education Program - Section 39-10-104(1), MCA, requires the department to administer the Natural Resource Worker's Education Program and adopt rules to implement:

## Findings and Recommendations

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- a. Procedures regarding the application process for eligible individuals.
- b. Procedures for disbursement of tuition scholarships and proration of scholarships.
- c. Procedures to limit the training available to each eligible individual to a maximum of two years.

The department needs to review applicable laws and ensure ARMs are adopted as required by statute.

### **Recommendation #2**

**We recommend the department implement procedures to ensure that the boards and licensing programs adopt administrative rules as required by state law.**

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### **Fees Commensurate With Costs**

The department is responsible for the Health Care Licensing and Business and Occupational Licensing Boards. These boards are responsible for licensing individuals for a variety of occupations. There are 33 state boards and 6 licensing programs that charge fees to license individuals. Section 37-1-134, MCA, requires all licensing boards allocated to the department to set fees reasonably related to the respective program area costs. Section 17-2-302, MCA, generally requires the boards and licensing programs may not maintain a cash balance greater than twice the annual appropriation.

In our review of the boards and licensing programs we found that seven of these boards had a cash balance in excess of two times the annual appropriations at the close of fiscal year 2003. The boards are listed below.

## Findings and Recommendations

**Table 1**  
**Excessive Cash Balances**  
**Fiscal Year 2003**

Board or Program	Cash Balance	Two Times the Annual Appropriations	Excess Cash Balance	Percent Over
Alternative Health Care	\$ 52,179	\$ 41,990	\$ 10,189	24.26%
Occupational Therapists	57,631	45,972	11,659	25.36%
Chemical Dependency Counselors	50,371	48,036	2,335	4.86%
Radiologic Technologists	141,640	102,920	38,720	37.62%
Physical Therapists	64,611	51,400	13,211	25.70%
Pharmacy	496,298	422,874	73,424	17.36%
Respiratory Care	29,213	19,980	9,233	46.21%

**Source: Compiled by the Legislative Audit Division from the Statewide Accounting, Budgeting, and Human Resource System.**

The Governor's Office of Budget and Program Planning did this same analysis in fiscal year 2001. That analysis showed that the Board of Pharmacy was not in compliance with this statute at the close of fiscal year 2001.

Department personnel are aware that the cash balances exceeded twice the appropriation amounts. Many boards chose not to decrease fees because they anticipated expenditures increasing during fiscal year 2004 and fiscal year 2005. One of the reasons that the Board of Occupational Therapists and the Board of Respiratory Care cash balances were too high is because other boards reimbursed these two boards for the initial capital outlay for a department computer system. This was in response to a prior audit recommendation to allocate the costs of the computer system to all the boards, not just to boards with large cash balances. During fiscal year 2003, the two boards received reimbursement from the other boards. The Boards of Occupational Therapists and Respiratory Care are considering reducing fees or allowing participants a free renewal.

## Findings and Recommendations

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The preceding paragraphs describe the fee requirements of most boards. State law further restricts the department's operations for boilers and steam engines. Section 50-74-309, MCA, states the account balance may not exceed one-half of one year's approved appropriation.

On the state's accounting system, the activity of the boilers and steam engines is combined with the activity of the cranes and the construction blasters. Since the activities of these three different functions are combined on the accounting system, the department cannot separate the activity to determine compliance with state law.

Department personnel stated the programs have always been treated as one program for accounting purposes and did not know the reason.

### **Recommendation #3**

**We recommend that the department and its licensing boards ensure that fees are commensurate with costs, as required by state law, and cash balances do not exceed the amounts allowed by state law.**

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### **Unemployment Insurance Benefit Overpayment Collections**

The department pays Unemployment Insurance Benefits throughout the year. Sometimes it overpays recipients and is unable to collect the overpayments and associated penalties. To expedite collection of certain unemployment insurance benefit overpayments, the department refers the unpaid balances to the Department of Revenue (DOR) for offset against tax refunds or other state payments.

Once a month or every other month, DOR will transfer the monies withheld during the previous month to the department. The department will then analyze the monies and deposit the monies in the clearing account in the Enterprise Fund or the penalty and interest account in the Federal Special Revenue Fund.

Section 39-51-402(2), MCA, states all money payable to the unemployment insurance fund, upon receipt by the department, must

## Findings and Recommendations

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be immediately deposited in the clearing account. The unemployment insurance clearing account, established by statute, is currently administered by DOR under its contract with the department to collect unemployment insurance premiums. The department can improve efficiency and ensure compliance with state law by instructing DOR to promptly deposit collections from offsets for benefit overpayments in the clearing account.

This is a prior audit recommendation that the department did not implement.

### **Recommendation #4**

**We recommend the department instruct the Department of Revenue to deposit collections from offsets for benefit overpayments in the clearing account as required by state law.**

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### Revenue Estimates

Section 17-7-111, MCA, states, in part, "...to prepare a state budget, the executive branch, the legislature and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category."

In fiscal year 2003 the department made errors in recording revenue estimates. Table 2 below is a list of the revenue estimate errors included in the financial schedules on page A-6. All actual revenue is recorded appropriately.

## Findings and Recommendations

**Table 2**  
**Revenue Estimate Errors**

	<b>State Special Revenue Fund</b>			
	Amount Reported	Error	Correct Amount	Percent Over (under) stated
Estimated Revenues and Transfers-In	30,092,503	4,429,852	25,662,651	17%
Budgeted Revenues and Transfers-in Over (Under) Estimated:				
Grants, Contracts, Donations and Abandonments	(6,032,385)	4,429,852	(1,602,533)	-276%
	<b>Federal Special Revenue Fund</b>			
	Amount Reported	Error	Correct Amount	Percent Over(under) stated
Estimated Revenues and Transfer-In	88,607,498	24,022,070	64,585,428	37%
Budgeted Revenues and Transfers-In Over (Under) Estimated:				
Other Financing Sources	204,354	(14,440,627)	(14,236,273)	101%
Federal	(46,325,215)	38,462,697	(7,862,518)	-489%

**Source: Created by the Legislative Audit Division from the Statewide Accounting, Budgeting, and Human Resource System.**

Once a revenue estimate is set up, department personal do not monitor it or amend it. However, personnel stated in the future they plan to review the estimates and make adjustments during the year to more appropriately reflect actual activity.

**Recommendation #5**

**We recommend that the department monitor its revenue estimates to ensure that errors in the estimates are corrected.**

**Independent Auditor's Report &  
Department Financial Schedules**

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# LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor  
John W. Northey, Legal Counsel



Deputy Legislative Auditors:  
Jim Pellegrini, Performance Audit  
Tori Hunthausen, IS Audit & Operations  
James Gillett, Financial-Compliance Audit

## INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee  
of the Montana State Legislature:

We have audited the accompanying Schedule of Changes in Fund Balances & Property Held in Trust, Schedule of Total Revenues & Transfers-In, and Schedule of Total Expenditures & Transfers-Out of the Department of Labor and Industry for the fiscal year ended June 30, 2003. The information contained in these financial schedules is the responsibility of the department's management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1, the financial schedules are presented on a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The schedules are not intended to be a complete presentation and disclosure of the department's assets, liabilities and cash flows.

In our opinion, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund balances and property held in trust of the Department of Labor and Industry for the fiscal year ended June 30, 2003, in conformity with the basis of accounting described in note 1.

Respectfully submitted,

*Signature on File*

James Gillett, CPA  
Deputy Legislative Auditor

August 12, 2003



LABOR AND INDUSTRY  
SCHEDULE OF CHANGES IN FUND BALANCES & PROPERTY HELD IN TRUST  
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Capital Projects Fund	Enterprise Fund	Internal Service Fund	Agency Fund	Private-Purpose Trust Fund
FUND BALANCE: July 1, 2002	\$ (7,649)	\$ 15,016,102	\$ 478,016	\$ 543,411	\$ 195,813,480	\$ 383,410		\$ 770,995
PROPERTY HELD IN TRUST: July 1, 2002							\$ 688,192	
<b>ADDITIONS</b>								
Budgeted Revenues & Transfers-In	51,638	24,477,673	42,277,741		93,496,275	4,160,676		
NonBudgeted Revenues & Transfers-In	195	156,267	11,957		1,659	60,000		
Prior Year Revenues & Transfers-In Adjustments	100	(2,222,879)	487,097		(17,551)			
Direct Entries to Fund Balance	987,608	5,361,062	(2,305,080)		(2,765,549)	19,026		(770,995)
Additions to Property Held in Trust							173,450	
Total Additions	<u>1,039,541</u>	<u>27,772,123</u>	<u>40,471,715</u>	<u>0</u>	<u>90,714,834</u>	<u>4,239,702</u>	<u>173,450</u>	<u>(770,995)</u>
<b>REDUCTIONS</b>								
Budgeted Expenditures & Transfers-Out	1,010,641	24,401,174	40,212,274	256,139	97,226,428	4,292,252		
NonBudgeted Expenditures & Transfers-Out		229,137	(316)	287,272	266,692	463,277		
Prior Year Expenditures & Transfers-Out Adjustments	(54)	481,520	(95,845)		(611,434)	(377,825)		
Reductions in Property Held in Trust							849,642	
Total Reductions	<u>1,010,587</u>	<u>25,111,831</u>	<u>40,116,113</u>	<u>543,411</u>	<u>96,881,686</u>	<u>4,377,704</u>	<u>849,642</u>	<u>0</u>
FUND BALANCE: June 30, 2003	\$ 21,305	\$ 17,676,394	\$ 833,618	\$ 0	\$ 189,646,628	\$ 245,408		\$ 0
PROPERTY HELD IN TRUST: June 30, 2003							\$ 12,000	

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-8.

LABOR & INDUSTRY  
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN  
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Capital Projects Fund	Enterprise Fund	Internal Service Fund	Total
<b>TOTAL REVENUES &amp; TRANSFERS-IN BY CLASS</b>							
Licenses and Permits		\$ 6,260,026					\$ 6,260,026
Taxes	\$ 195	7,070	\$ 3,832				11,097
Charges for Services		10,433,103			\$ 8,622	\$ 3,068,785	13,510,510
Investment Earnings		64,950			(13,094,822)		(13,029,872)
Fines and Forfeits	51,738	443,874	69,045				564,657
Sale of Documents, Merchandise and Property		10,540			146,940		157,480
Rentals, Leases and Royalties		35,660					35,660
Contributions and Premiums					64,335,800		64,335,800
Miscellaneous		136			456,279		456,415
Grants, Contracts, Donations and Abandonments		5,056,386	117,003				5,173,389
Other Financing Sources		98,754	4,323,490		332,943	60,000	4,815,187
Federal		562	38,263,425		41,294,621		79,558,608
Federal Indirect Cost Recoveries						1,091,891	1,091,891
Total Revenues & Transfers-In	51,933	22,411,061	42,776,795	0	93,480,383	4,220,676	162,940,848
Less: Nonbudgeted Revenues & Transfers-In	195	156,267	11,957		1,659	60,000	230,078
Prior Year Revenues & Transfers-In Adjustments	100	(2,222,879)	487,097		(17,551)		(1,753,233)
Actual Budgeted Revenues & Transfers-In	51,638	24,477,673	42,277,741	0	93,496,275	4,160,676	164,464,003
Estimated Revenues & Transfers-In	62,368	30,092,503	88,607,498	16,000	82,894,667	4,214,102	205,887,138
Budgeted Revenues & Transfers-In Over (Under) Estimated	\$ (10,730)	\$ (5,614,830)	\$ (46,329,757)	\$ (16,000)	\$ 10,601,608	\$ (53,426)	\$ (41,423,135)
<b>BUDGETED REVENUES &amp; TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS</b>							
Licenses and Permits		\$ 55,348					\$ 55,348
Taxes		(150,000)	\$ (3,894)				(153,894)
Charges for Services	\$ (5,000)	690,336	(1,000)		\$ (192,144)	\$ (165,500)	326,692
Investment Earnings		(368,906)		\$ (16,000)	(15,601,746)		(15,986,652)
Fines and Forfeits	(5,730)	2,280,343	(281,105)				1,993,508
Sale of Documents, Merchandise and Property		(12,285)	(34,200)		(173,749)		(220,234)
Rentals, Leases and Royalties		(14,560)				(6,817)	(21,377)
Contributions and Premiums					14,335,800		14,335,800
Miscellaneous					77,202		77,202
Grants, Contracts, Donations and Abandonments		(6,032,385)	111,303				(5,921,082)
Other Financing Sources		9,600	204,354				213,954
Federal		(2,072,321)	(46,325,215)		12,156,245		(36,241,291)
Federal Indirect Cost Recoveries						118,891	118,891
Budgeted Revenues & Transfers-In Over (Under) Estimated	\$ (10,730)	\$ (5,614,830)	\$ (46,329,757)	\$ (16,000)	\$ 10,601,608	\$ (53,426)	\$ (41,423,135)

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-8.

LABOR AND INDUSTRY  
 SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2003

PROGRAM (SUBCLASS) EXPENDITURES & TRANSFERS-OUT	BUSINESS STANDARDS DIVISION	COMMISSIONER'S OFFICE/CSD	EMPLOYMENT RELATIONS DIVISION	OFFICE OF COMMUNITY SERVICES	UNEMPLOYMENT INSURANCE DIVISION	WORK FORCE SERVICES DIVISION	WORKERS COMPENSATION COURT	Total
<b>Personal Services</b>								
Salaries	\$ 4,102,622	\$ 2,376,849	\$ 3,983,748	\$ 114,709	\$ 3,452,120	\$ 11,431,292	\$ 247,243	\$ 25,708,583
Hourly Wages			44					44
Other Compensation	99,300		6,250		6,000	1,693		113,243
Employee Benefits	1,169,386	579,692	1,092,962	33,520	980,321	3,295,021	58,822	7,209,724
Personal Services-Other		62,645				(37)		62,608
<b>Total</b>	<b>5,371,308</b>	<b>3,019,186</b>	<b>5,083,004</b>	<b>148,229</b>	<b>4,438,441</b>	<b>14,727,969</b>	<b>306,065</b>	<b>33,094,202</b>
<b>Operating Expenses</b>								
Other Services	1,191,102	166,923	724,197	33,409	1,141,697	1,702,476	26,873	4,986,677
Supplies & Materials	389,331	109,739	198,846	8,238	248,037	550,711	6,995	1,511,897
Communications	364,567	60,044	184,932	6,132	391,927	396,890	6,049	1,410,541
Travel	509,009	32,057	166,276	48,681	97,297	349,948	7,655	1,210,923
Rent	278,552	167,552	446,657	8,679	89,407	696,579	22,723	1,710,149
Utilities	2,143		5,595		14,969	113,843	2,521	139,071
Repair & Maintenance	86,705	21,214	23,354	744	85,047	294,329	23,328	534,721
Other Expenses	2,537,160	214,673	673,563	56,620	477,527	1,392,357	24,690	5,376,590
Goods Purchased For Resale	3,222							3,222
<b>Total</b>	<b>5,361,791</b>	<b>772,202</b>	<b>2,423,420</b>	<b>162,503</b>	<b>2,545,908</b>	<b>5,497,133</b>	<b>120,834</b>	<b>16,883,791</b>
<b>Equipment &amp; Intangible Assets</b>								
Equipment	159,863	25,228	12,130			22,316		219,537
Intangible Assets						37,200		37,200
<b>Total</b>	<b>159,863</b>	<b>25,228</b>	<b>12,130</b>			<b>59,516</b>		<b>256,737</b>
<b>Grants</b>								
From State Sources	2,260					313,743		316,003
From Federal Sources				1,807,792		16,257,566		18,065,358
From Other Sources						167,650		167,650
<b>Total</b>	<b>2,260</b>			<b>1,807,792</b>		<b>16,738,959</b>		<b>18,549,011</b>
<b>Benefits &amp; Claims</b>								
To Individuals			958,399		92,496,510			93,454,909
From State Sources			170,811					170,811
From Federal Sources					(1,388)			(1,388)
Insurance Payments			(355,925)					(355,925)
<b>Total</b>			<b>773,285</b>		<b>92,495,122</b>			<b>93,268,407</b>
<b>Transfers</b>								
Accounting Entity Transfers	94,043	8,135	35,072		4,935,568	18,483		5,091,301
Mandatory Trnsfers					789,806	104,302		894,108
<b>Total</b>	<b>94,043</b>	<b>8,135</b>	<b>35,072</b>		<b>5,725,374</b>	<b>122,785</b>		<b>5,985,409</b>
<b>Debt Service</b>								
Capital Leases					3,775			3,775
<b>Total</b>					<b>3,775</b>			<b>3,775</b>
<b>Total Expenditures &amp; Transfers-Out</b>	<b>\$ 10,989,265</b>	<b>\$ 3,824,751</b>	<b>\$ 8,326,911</b>	<b>\$ 2,118,524</b>	<b>\$ 105,208,620</b>	<b>\$ 37,146,362</b>	<b>\$ 426,899</b>	<b>\$ 168,041,332</b>
<b>EXPENDITURES &amp; TRANSFERS-OUT BY FUND</b>								
General Fund		\$ 157,385	\$ 828,285	\$ 23,907		\$ 1,010		\$ 1,010,587
State Special Revenue Fund	\$ 9,290,463	633,957	6,979,530	5,901	\$ 793,917	6,981,164	\$ 426,899	25,111,831
Federal Special Revenue Fund		354,507	590,495	2,088,716	7,059,428	30,022,967		40,116,113
Capital Projects Fund					543,411			543,411
Enterprise Fund			(71,399)		96,811,864	141,221		96,881,686
Internal Service Fund	1,698,802	2,678,902						4,377,704
<b>Total Expenditures &amp; Transfers-Out</b>	<b>10,989,265</b>	<b>3,824,751</b>	<b>8,326,911</b>	<b>2,118,524</b>	<b>105,208,620</b>	<b>37,146,362</b>	<b>426,899</b>	<b>168,041,332</b>
Less: Nonbudgeted Expenditures & Transfers-Out	101,818	457,357	263,074	5,902	287,271	130,639		1,246,061
Prior Year Expenditures & Transfers-Out Adjustments	16,363	(378,426)	(614,675)		338,223	34,712	165	(603,638)
<b>Actual Budgeted Expenditures &amp; Transfers-Out</b>	<b>10,871,084</b>	<b>3,745,820</b>	<b>8,678,512</b>	<b>2,112,622</b>	<b>104,583,126</b>	<b>36,981,011</b>	<b>426,734</b>	<b>167,398,909</b>
Budget Authority	11,153,916	4,233,906	9,104,044	3,003,125	120,003,322	45,053,846	451,502	193,003,661
<b>Unspent Budget Authority</b>	<b>\$ 282,832</b>	<b>\$ 488,086</b>	<b>\$ 425,532</b>	<b>\$ 890,503</b>	<b>\$ 15,420,196</b>	<b>\$ 8,072,835</b>	<b>\$ 24,768</b>	<b>\$ 25,604,752</b>
<b>UNSPENT BUDGET AUTHORITY BY FUND</b>								
General Fund		\$ 6,029	\$ 114,551	\$ 784		\$ 41,873		\$ 163,237
State Special Revenue Fund	\$ 268,976	106,105	113,496		\$ 12,677	1,786,086	\$ 24,768	2,312,108
Federal Special Revenue Fund		115,954	143,839	889,719	12,131,498	6,220,182		19,501,192
Capital Projects Fund					91,665			91,665
Enterprise Fund			53,646		3,184,356	17,862		3,255,864
Internal Service Fund	13,856	259,998				6,832		280,686
<b>Unspent Budget Authority</b>	<b>\$ 282,832</b>	<b>\$ 488,086</b>	<b>\$ 425,532</b>	<b>\$ 890,503</b>	<b>\$ 15,420,196</b>	<b>\$ 8,072,835</b>	<b>\$ 24,768</b>	<b>\$ 25,604,752</b>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-8.



# Department of Labor and Industry

## Notes to the Financial Schedules

### For the Fiscal Year Ended June 30, 2003

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#### 1. **Summary of Significant Accounting Policies**

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##### **Basis of Accounting**

The department uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund category, which includes the General, Special Revenue, and Capital Projects Funds. In applying the modified accrual basis, the department records:

Revenues when it receives cash or when receipts are measurable and available to pay current period liabilities.

Expenditures for valid obligations when the department incurs the related liability and it is measurable, with the exception of the cost of employees' annual and sick leave. State accounting policy requires the department to record the cost of employees' annual leave and sick leave when used or paid.

The department uses the accrual basis of accounting for its Proprietary and Fiduciary fund categories. Under the accrual basis, as defined by state accounting policy, the department records revenues in the accounting period earned, when measurable, and records expenses in the period incurred, when measurable.

Expenditures and expenses may include: entire budgeted service contracts even though the department receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

##### **Basis of Presentation**

The financial schedule format is in accordance with the policy of the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment. The department uses the following funds:

## Notes to the Financial Schedules

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### **Governmental Fund Category**

**General Fund** - to account for all financial resources except those required to be accounted for in another fund. The department's General Fund financial activity records support from the state to operate the following programs: Human Rights Commission, Silicosis Benefits, and Jobs for Montana Graduates.

**State Special Revenue Fund** - to account for proceeds of specific state revenue sources, other than private-purpose trusts or major capital projects, that are legally restricted to expenditures for specific purposes. Department State Special Revenue Funds include professional and occupational licensing boards, weights and measures, and building codes.

**Federal Special Revenue Fund** - to account for proceeds of specific federal revenue sources, other than private-purpose trusts or major capital projects, that are legally restricted to expenditures for specific purposes. Department Federal Special Revenue Funds include U.S. Department of Labor Employment Service programs, Workforce Investment Act programs, Job Training Partnership Act programs and Displaced Homemakers.

**Capital Projects Fund** - to account for financial resources used for the acquisition or construction of major capital assets, other than those financed by proprietary funds or trust funds. The department uses this fund for bonded costs associated with programming its computer system, which is used for recording unemployment benefit payments, penalty and interest for the Unemployment Insurance Fund.

### **Proprietary Fund Category**

**Internal Service Fund** - to account for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursement basis. Department Internal Service Funds include funds to accumulate and distribute indirect costs. These include the Commissioner's Office/Centralized Services-Direct Charge Fund, the Business Standards Division Administrative Services Fund and the Business Standards Division Hearings Fund.

**Enterprise Fund** - to account for operations (a) financed and operated in a manner similar to private business enterprises, where the Legislature intends that the department finance or recover costs primarily through user charges; or (b) where the Legislature has decided that periodic determination of revenues earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. Department Enterprise Funds include the Unemployment Insurance Fund and the Subsequent Injury Fund.

### Fiduciary Fund Category

**Private-Purpose Trust Fund** - to account for activity of all trust arrangements under which principal and income benefit individuals, private organizations, or other governments. Department Private-Purpose Trust Funds include the Escheated Property Fund that collects wages and fines from employers on behalf of employees, under the Wage Protection Act.

**Agency Fund** – to account for resources held by the state in a purely custodial capacity. The department accounts for contractor registration security deposits in the Agency Fund.

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### 2. General Fund Balance

The department has authority to pay obligations from the statewide General Fund within its appropriation limits. The department's total assets placed in the fund exceed outstanding liabilities, resulting in a positive ending General Fund balance for the fiscal year ended June 30, 2003. This balance reflects activity at the department and not the fund balance of the statewide General Fund.

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### 3. Expenditure Program (Subclass)

As part of the implementation of a new accounting system in fiscal year 1999-2000, state officials determined that a subclass designation would identify the program to which expenditures should be charged. The program designations in the Schedules of Total Expenditures & Transfers-Out are based on the sub-class designation used when the expenditures were recorded.

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### 4. Direct Entries to Fund Balance

Direct entries to fund balances in the General, Special Revenue, Capital Projects, Internal Service, and Enterprise

## Notes to the Financial Schedules

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funds include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

State Special Revenue Fund and Federal Special Revenue Fund – Within the State Special Revenue Fund is the Employment Security Account. This fund is shared by the Department of Revenue, the Department of Public Health and Human Services, the Department of Military Affairs, and the School for the Deaf and Blind. Within the Federal Special Revenue Fund are the Unemployment Insurance Administrative Grants shared by the Department of Revenue.

Enterprise Fund - Included in the Enterprise Funds is the Subsequent Injury Fund. The material direct entry to fund balance within this fund was to reestablish estimated claims liability at June 30, 2001.

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### 5. Revenue Estimates

The department incorrectly recorded revenue estimates during fiscal year 2003. These estimates affected the State Special Revenue Fund – Grants Contracts, Donations and Abandonments, and the Federal Special Revenue Fund – Other Financing Sources and Federal Revenues. Below is a table explaining the errors reported on the Schedule of Total Revenues and Transfers-In.

## Notes to the Financial Schedules

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### Revenue Estimate Errors

<b>State Special Revenue Fund</b>			
	Amount Reported	Over/(Under) Estimated	Correct Amount
Estimated Revenues and Transfers-In Budgeted Revenues and Transfers-in Over (Under) Estimated:	\$30,092,503	\$4,429,852	\$25,662,651
Grants, Contracts, Donations and Abandonments	\$(6,032,385)	\$4,429,852	\$(1,602,533)
<b>Federal Special Revenue Fund</b>			
	Amount Reported	Over/(Under) Estimated	Correct Amount
Estimated Revenues and Transfer-In Budgeted Revenues and Transfers-In Over (Under) Estimated:	\$88,607,498	\$24,022,070	\$64,585,428
Other Financing Sources	\$ 204,354	\$(14,440,627)	\$(14,236,273)
Federal	\$(46,325,215)	\$ 38,462,697	\$ (7,862,518)



# **Department Response**

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OCT 15 2003

LEGISLATIVE AUDIT DIV.



Governor Judy Martz

*Montana*

**Department of Labor and Industry**

*Centralized Services Division*

October 14, 2003

Scott Seacat  
Legislative Auditor  
PO Box 201705  
Helena MT 59620-1725

Dear Mr. Seacat:

Enclosed please find the Department of Labor and Industry's written response to the final report on the audit for the one-year ended June 30, 2003.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tammy Peterson".

Tammy Peterson, Administrator  
Centralized Services Division  
Department of Labor and Industry

cc: Wendy Keating, Commissioner

Encl.

**Page B-3**

P.O. BOX 1728 HELENA MT 59624-1728 • PHONE (406) 444-9091 • FAX (406) 444-1419 • TTD (406) 444-0532

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Financial Compliance Audit  
For the Fiscal Year Ended June 30, 2003  
Department of Labor and Industry  
October 14, 2003

**Recommendation #1:**

**We recommend the department implement procedures to:**

- A. Identify laws impacting department operations.**
- B. Coordinate and fix responsibility for state compliance.**
- C. Improve management oversight to ensure and facilitate compliance with state laws.**

Conditionally concur. See specific discussions, below.

Identifying laws

Since the transfer of professional and occupational licensing functions from Commerce to Labor in 2001, the department has taken great strides in reviewing and re-writing statutes and administrative rules impacting department operations in those areas. The department has hired additional legal staff to identify department statutory responsibilities, and ensure enforcement. The process is enormous and involves all divisions within the department.

Coordinating state compliance

The department has coordinated and assigned responsibility for compliance. The auditors were unable at times to locate the appropriate staff person(s) to obtain information, leading to some confusion. The department will take steps during future audits to ensure that audit staff are provided the names and telephone numbers of staff persons who can provide appropriate, applicable information.

Improve management oversight

The Business Standards Division, responsible for professional and occupational licensing functions, and the Employment Relations Division, responsible for workers' compensation and independent contractor regulatory functions, have both reorganized and/or hired new management staff over the past several months. The Unemployment Insurance Division, as the result of recent legislation returning the UI tax function to the department, and the Workforce Services Division, as the result of streamlined federal funding and requirements, are currently reviewing internal management structure and responsibilities. The reorganizations and management restructuring should result in improved management oversight that will ensure compliance.

Contractor Registration and Independent Contractor Exemptions

Concur. The department will seek legislation in 2005 that will allow the department to rectify the issue.

Financial Compliance Audit  
For the Fiscal Year Ended June 30, 2003  
Department of Labor and Industry  
October 14, 2003

Reporting Independent Contractor Exemptions

Concur. Section 39-51-604, MCA, states that an "exemption ... must be reported" to the State Compensation Insurance Fund. The statute does not speak to the frequency of the reporting, or the method of reporting. The department is reporting exemptions to the SCIF upon request. Since the exemptions are reported, the intent of the statute has been met.

Subsequent Injury Fund

Do not concur. The intent of § 39-71-915(2), MCA, is not to artificially reduce the assessment amount by including unrealized investment income, a book entry, in the assessment calculation. The statute requires the Board of Investments to invest the money of the fund, and to deposit investment income into the fund. Per the Board of Investments, investment income is not deposited into the fund until such time as the investment is sold, and a gain or loss realized. The department appropriately considers actual and deposited investment income when determining the assessment amount, but has not considered unrealized, undeposited investment income because it is not, in fact, a deposited, real, amount. The department is responsible for maintaining the solvency of the fund. It cannot carry out its responsibility by artificially decreasing assessment amounts by unrealized income.

Apprenticeship Program

Concur. The department changed the employer contracts on July 22, 2003 to reflect the appropriate language.

Building Codes

Concur. The department allocated fees on September 2, 2003 to the Building Codes Education Program.

Auctioneers and Auction Sales Enforcement

Do not concur. The department is aware that it carries joint enforcement responsibility with the county attorney of the county in which the violation occurred. The department contacts the applicable county attorney when a violation occurs and provides specific information on the event. The county attorney investigates the issue if necessary, makes appropriate filings in the county in which the violation occurred, or takes appropriate steps to address the violation. The department and the county attorney remain in any necessary contact during the course of the enforcement activity.

Board of Nursing

Concur. The department concurs that the LPN application stated that fees paid were non-refundable. Following notification of the issue by the auditors, the department removed the non-refundable language from the application. However, no LPN withdrew his or her application not later than five

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days prior to the date of examination during the audit period. As a result, the Board owed no refunds during the audit period, thus remaining in compliance with the statute.

Board of Private Security Patrol Officers and Investigators

Concur. The department determined that ARM 8.50.426 conflicted with § 37-60-302 and ARM 8.50.425. Additionally, the department received numerous contacts from private investigators licensed in other states who needed to conduct business in Montana for only short periods of time when following an assigned case. As a result of the conflicting language and contacts from concerned private investigators, the department requested clarification from the Board. The Board determined that the intent of the statute was to require large companies that hire private investigators to meet the same requirements as contract security companies and proprietary security organizations. The Board reported that it was not its intent to require a private investigator following a case into Montana, when the case originated outside the state, to be licensed in Montana. With the help of a volunteer task force, the Board began to rewrite applicable statutes and rules in mid-2002. It is conducting a complete rules review, as well. The department will submit recommended statutory changes to the 2005 Legislature.

Section 37-60-302(1) requires licensees to submit changes to the Board by certified mail. However, with the advent of e-mail, facsimile and other technological advances, the Board determined that it is no longer necessary to submit written notification by certified mail. The department will submit recommended statutory changes to the 2005 Legislature.

Section 37-60-304(4) requires the Board to send written notification of a submitted application to the chief of police, sheriff and county attorney in the jurisdiction of the applicant. The Board determined that the intent of the statute is to advise law enforcement agencies of the presence of a private investigator who might be in the area conducting surveillance. The department will submit changes reflecting this intent to the 2005 Legislature.

Board of Cosmetologists

Concur. The 2003 Legislature combined the Board of Barbers with the Board of Cosmetologists. A new board was appointed effective October 1, 2003, which resolves the current issue.

**Recommendation #2:**

**We recommend the department implement procedures to ensure that the boards and licensing programs adopt administrative rules as required by state law.**

Concur. The department has undertaken the enormous responsibility to review, write and rewrite administrative rules to assure compliance with the law. The department has made great progress in its efforts over the past two years. It should be noted that without authorization from the boards, the department may not notice and adopt rules for the boards. Each board files and adopts its unique

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administrative rules in accordance with Montana Administrative Procedures Act, which can be a time consuming process.

**Recommendation #3:**

**We recommend that the department and its licensing boards ensure that fees are commensurate with costs, as required by state law, and cash balances do not exceed the amounts allowed by state law.**

Concur. See following descriptions for specific discussion.

Alternative Health Care, Chemical Dependency Counselors, Physical Therapists, Pharmacy and Respiratory Care: Due to the cost of operations in each of these funds, the Boards will be in compliance with no fee reduction by June 30, 2004.

Occupational Therapists: The cash balance of this fund is out of compliance due to the transfer of \$16,681 as a result of the Oracle reallocation, a former audit recommendation. The Board will reduce 2005 fees to bring the fund to compliance.

Radiologic Technologists: The cash balance of the fund is out of compliance due to the transfer of \$35,274 as a result of the Oracle reallocation, a former audit requirement. The Board will waive 2004 renewal fees, and reduce 2005 fees so that the fund will come into compliance.

Boilers and Steam Engines, Cranes, Blasters: The department separated financial activity of the three programs in September 2003, coming into compliance with the issue.

**Recommendation #4:**

**We recommend the department instruct the Department of Revenue to deposit collections from offsets for benefit overpayments in the clearing account as required by state law.**

Concur. The department has worked closely with the Department of Revenue to bring these collections into compliance. However, due to issues with POINTS, the Department of Revenue's computer system, the funds cannot be identified quickly enough to ensure compliance with law. The Department of Revenue is in the process of instituting a new computer system that should rectify the problem.

**Recommendation #5:**

**We recommend the department monitor its revenue estimates to ensure that errors in the estimates are corrected.**

Concur. The Centralized Services Division instituted processes in September 2003 to monitor and adjust revenue estimates as necessary.