

SELECTED LEGISLATION OF INTEREST TO THE LEGISLATIVE FINANCE COMMITTEE

Prepared for the
Legislative Finance Committee
by

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INTRODUCTION

The legislative Finance Committee (LFC) requested changes to Montana law through several pieces of legislation during the 2001 legislature. The LFC-requested bills are summarized below for the LFC. This summary includes a listing of the highlights of each bill passed by the 2001 legislature along with a description of the differences between the LFC recommendations and the final form of the changes made to Montana law. In addition to legislation requested by the LFC, other bills passed by the 2001 legislature impact sections of law that deal with state finances and may be of particular interest to the LFC. The highlights of these bills are summarized below.

STATUS OF LEGISLATION REQUESTED BY THE LEGISLATIVE FINANCE COMMITTEE

HOUSE BILL 41

What the Enrolled Version Does

HB 41 revises laws governing dedicated revenue and statutory appropriations. As passed by the legislature, the bill:

- Eliminates the requirement for the LFC to review dedicated revenue each interim
- Establishes a subfund of the state general fund into which the state equalization aid revenue previously deposited into the general fund must now be deposited
- Establishes a statutory appropriation for grants for school technology purchases
- Directs that money derived from the sale of forfeited property used for the theft or illegal transportation of livestock shall be deposited into the state general fund instead of the state special revenue account

HB 41 has become law.

Key Differences Between the Enrolled and Introduced Versions

As introduced, the bill began exclusively as a de-earmarking bill. The enrolled version of HB 41 went further by revising laws for reviewing earmarked funds and is different from the introduced version requested by the LFC in the following ways:

- The legislature directed that revenue from the annual timber sale on common school trust lands be deposited into a subfund of the general fund and made state equalization aid a statutory appropriation
- The legislature eliminated the requirements for interim reviews by the LFC of dedicated revenues and statutory appropriations
- The legislature changed the basis for allocating school technology grants from being based on purchases made during the current school year to being based on purchases made the prior fiscal year

- The legislature did not de-earmark to the general fund fines and penalties of 82-4-311, MCA, associated with hard-rock mining and reclamation laws as recommended by the LFC
- The legislature did not make the transfers of 90-6-331, MCA¹, a statutory appropriation as recommended by the LFC

HOUSE BILL 69

What the Enrolled Version Does

HB 69 revises mining laws. The LFC requested the legislature primarily because of concerns about potential state liability due to deficiencies in Montana’s metal mine performance bond statues. The LFC was particularly concerned that the statutes did not provide the financial security necessary to protect the state from costs being incurred for metal mine reclamation. As passed by the legislature, the bill:

- Allows the hard-rock mining and reclamation account and the opencut mining and reclamation account to earn and keep all accrued interest on the respective account
- Establishes an exploration license renewal fee of \$25, increased the exploration license fee from \$5 to \$100, increases the fee to obtaining an operating permit from \$25 to \$100, and increases the annual report of activities fee for large-scale mineral developers from \$25 to \$100
- Revises the metal mine reclamation performance bond requirements to:
 - 1) allow an irrevocable letter of credit to be permitted in lieu of a performance bond for metal mine reclamation;
 - 2) allow the Department of Environmental Quality to use a third-party contractor, compensated by the metal mine applicant for determining the reclamation bond amounts;
 - 3) establish a time limit for issuing a final bond determination; and
 - 4) address an imminent danger to public health, safety, or the environment caused by a violation of performance bonding requirements
- Provides an exception for conducting mining or exploration by persons involved in a bond forfeiture

HB 69 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of HB 69 is different from the introduced version requested by the LFC in the following ways:

- The LFC recommended changes to the definition for a small miner operating at more than one location, but the legislature left the definition as it was with only minor editorial changes (82-4-301, MCA)
- The LFC recommended modifications to the small miner exemption and reclamation requirements of 82-4-305, MCA, but the legislature left the section as it was

¹ 90-6-331, MCA, transfers to counties all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust reserve account

- The LFC recommended eliminating the condition that if the person requesting an exploration license meets the conditions described in 82-4-360, MCA, they may not be issued an exploration license, but the legislature left Section 82-4-331, MCA, as it was
- The LFC recommended adding a 10 percent contingency for unforeseen events and allowed the department to retain the contingency portion of the bond for 10 years after it has released the remainder of the bond. The legislature specifically excluded inclusion of a contingency that is not for a reasonable foreseeable result of any activity conducted by the applicant for the purposes of bond calculations
- The legislature added the ability to use a third-party contractor to calculate one or more reclamation plan components
- The legislature added the ability to grant a 30-day extension if the licensee or permittee can not post the bond within 30 days and they are able to demonstrate reasonable diligence
- The legislature identified use of performance bond funds if an imminent danger to public health, safety, or the environment caused by a violation of hard-rock mining laws is found to exist
- The legislature added the requirement for a suspension of operations if a bond is terminated
- The LFC recommended eliminating the ability to allow an exception to a person forbidden to applying for an operating permit after the person, firm, or business associated forfeited on a bond. The legislature left the exception intact

Please refer to Attachment A for a slightly different comparison between the introduced and enrolled versions of HB 69.

SENATE BILL 131

What the Enrolled Version Does

SB 131 revises laws governing information technology. As passed by the legislature, the bill:

- Provides for an information technology board (19 members), including specifying membership, appointing authority, qualifications, compensation, and duties
- Documents legislative policy for use and development of information technology resources in state government
- Consolidates and updates information technology related statutes under the Department of Administration
- Provides for a Chief Information Officer for the state under the management of the director of the Department of Administration
- Specifies a state strategic information technology plan, provides plan enforcement responsibilities to the Department of Administration, and links information technology planning to state budgeting
- Specifies policy, content, update requirements, review, and approval of agency information technology plans

- Requires the Department of Administration to review, approve, and sign all state agency contracts for information technology resources provided by the private sector and other government entities
- Provides enforcement authority for the Department of Administration to ensure statewide compliance with the state strategic information technology plan, agency information technology plans, and the statewide information technology policies and standards
- Added powers and duties for the Legislative Finance Committee to monitor the information technology policies of the Department of Administration with specific attention given to:
 - 1) identification of information technology issues likely to require future legislative attention; and
 - 2) evaluation and comment (written) on proposed information technology policy changes and the fiscal implications of the proposed changes

SB 131 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of SB 131 is different from the introduced version requested by the LFC in the following ways:

- The introduced version placed duties and responsibilities for information technology governance under a new department, headed by a Chief Information Officer, but the bill passed by the legislature maintained the duties and responsibilities under the Department of Administration.
- The introduced version established a 17 member board, but the enrolled version established a 19 member board: 1) eliminating the federal government member; 2) adding the director of the Office of Budget and Program Planning, the director of the Department of Administration, and a member representing the Public Service Commission; and 3) specifying that the agency members must be agency directors, not their designees as specified in the introduced version
- The enrolled version of the bill provides enforcement responsibilities for the Department of Administration to ensure compliance with the various information technology related strategic plans and provides voiding language in all contracts for information technology that fail to reference the department's enforcement responsibilities

MENTAL HEALTH BILLS

The LFC made several recommendations based upon the report by its mental health subcommittee to change certain aspects of mental health laws. Each is summarized below.

House Joint Resolution 1

What the Enrolled Version Does

HJR 1 provides for a mental health services oversight subcommittee of the Legislative Finance Committee for the 2001 to 2002 interim. As passed by the legislature, the bill:

- Establishes an interim subcommittee of the Legislative Finance Committee to study the integration of mental health services within the Department of Public Health and Human Services and across all state agencies that serve adults with mental illness or children with serious emotional disturbances and adults or children with other coexisting disorders
- Provides subcommittee membership with members of the:
 - 1) Legislative Finance Committee;
 - 2) Legislative Audit Committee;
 - 3) Interim Committee of Children, Families, Health, and Human Services;
 - 4) Interim Committee of Law, Justice, and Indian Affairs; and
 - 5) Interim Committee of State Administration, Public Retirement Systems, and Veteran's Affairs

HJR 1 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of HJR 1 is different from the introduced version requested by the LFC in that it clarifies reporting requirements of the Mental Health Oversight Advisory Council, requests that the subcommittee study children mental health issues, and clarifies the roles and responsibilities of the subcommittee, the advisory council, and the department.

Senate Joint Resolution 2

What the Enrolled Version Does

SJ 2 documents a request by the legislature that the Department of Public Health and Human Services and the Department of Corrections coordinate and collaborate with the Department of Justice, the Montana Board of Crime Control, the Peace Office Standards and Training Council, District Courts, and courts of limited jurisdiction, the State Bar of Montana, the Community Mental Health Centers, and other mental health professionals to develop, coordinate, and integrate training on issues regarding mental illness and other co-occurring disorders that present themselves in persons at various stages of the criminal justice system.

SJ 2 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled and introduced versions of SJ 2 are virtually the same with the only changes made to add the term, "that it is requested" to many of the statements of the bill.

Senate Bill 82

What the Enrolled Version Does

SB 82 revises laws on the public mental health system and managed care. As passed by the legislature, the bill:

- Consolidated managed health care entity financial solvency provisions under the Department of Public Health and Human Services
- Reorganized certain mental health managed care laws and public mental health system laws
- Redefined “managed care community network”
- Provided a requirement for a system of tracking children who need mental services
- Set the eligibility cap for public mental health services at 160 percent of the federal poverty threshold

SB 82 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of SB 82 is different from the introduced version requested by the LFC in the following ways:

- The introduced version of the bill consolidated managed health care entity financial solvency provisions under the Commissioner of Insurance, but the legislature consolidated these provisions under the Department of Public Health and Human Services
- The LFC recommended retaining the current law eligibility cap for public mental health services at 200 percent of the federal poverty threshold, but the cap was set at 160 percent when the bill became law. An amendment of the Governor increased the cap from the 150 percent level as it was passed by the legislature

Senate Bill 107

What the Enrolled Version Does

SB 107 allows teleconferencing in mental health proceedings. As passed by the legislature, the bill:

- Allows the use of two-way electronic audio-video communication in mental illness proceedings at the discretion of the court
- Provides that the costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed and the cost of the communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state

SB 107 has become law.

Key Differences Between the Enrolled and Introduced Versions

SB 107 was passed by the legislature as it was introduced and recommended by the LFC.

Senate Bill 108

What the Enrolled Version Does

SB 108 revises laws associated with mental health professionals, particularly involving an advanced practice registered nurse providing mental health associated tasks. As passed by the legislature, the bill:

- Adds an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing to the definition of a mental health professional and professional persons in 27-1-1101 and 53-21-102, MCA
- Adds an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing to the list of professional authorized to order the administering of medication for patients being treated for mental disorders

SB 108 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of SB 108 is different from the introduced version requested by the LFC in the following ways:

- The legislature added the requirement that an advanced practice registered nurse must have a clinical specialty in psychiatric mental health nursing in order to perform the tasks of the bill
- In addition to adding an advanced practice registered nurse to the definition of professional person (53-21-102, MCA) the legislature added an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing to the definition of mental health professional (27-1-1101, MCA)

SENATE BILL 135

What the Enrolled Version Does

SB 135 revises laws regarding the mental health managed care ombudsman. As passed by the legislature, the bill:

- Renamed the mental health managed care ombudsman to the mental health ombudsman
- Attached the ombudsman to the Office of the Governor for administrative purposes instead of the Mental Disabilities Board of Visitors
- Expanded whose interests the ombudsman may represent
- Provided confidentiality for names and material from an investigation
- Allows the ombudsman to receive confidential mental health records

SB 135 has become law.

Key Differences Between the Enrolled and Introduced Versions

The enrolled version of SB 135 is different from the introduced version requested by the LFC in the following ways:

- The LFC recommended that the attorney general should be the legal counsel for the ombudsman, but the legislature provided that the ombudsman may retain counsel for legal support
- The LFC recommended that the ombudsman should be allowed to subpoena witnesses, take testimony under oath, administer oaths, and require the production of books, papers, documents, and evidence pertinent to an investigation, but the legislature did not provide this authority

LEGISLATION NOT REQUESTED BY, BUT IMPACTING THE LEGISLATIVE FINANCE COMMITTEE

In addition to legislation requested by the LFC, other bills passed and approved by the 2001 legislature may be of interest to the LFC because of their impacts on state finance laws or duties of the LFC.

HOUSE BILL 73

HB 72 establishes a full cost accounting pilot program. As passed by the legislature, the bill:

- Establishes a full cost accounting pilot program for select divisions, bureaus, units, and programs beginning July 1, 2001
- Requires each specified entity to provide a final report of the findings to the Business and Labor Interim Committee, the Legislative Finance Committee, and the Legislative Auditor no later than September 1, 2002
- Expands the duties of the Business and Labor Interim Committee to include a review of the implementation and administration of the full cost accounting pilot program and to make recommendations for implementing a full cost accounting model for all state agencies

HOUSE BILL 533

HB 533 revises laws for operating budgets and fund transfers:

- Clarifies that the operating budgets and fund transfers must conform to conditions contained in the General Appropriations Act
- Clarifies that the legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation
- Clarifies that operating plan changes and program transfers of budget authority must be approved in writing (be signed)

SENATE JOINT RESOLUTION 22

At its May 18, 2001, meeting, the Legislative Council assigned SJR 22 to the Economic Affairs Committee and recommended that a joint subcommittee be established among members of the Economic Affairs Committee; the Legislative Finance Committee; and the Children, Families, Health, and Human Services Committee. SJR 22 provides for a study of rising health care costs and health insurance and includes the following study topics:

- Purchasing pools for individual and small group insurance
- Provider reimbursement rates and cost shifting of health care costs
- Access to affordable prescription drugs
- Strategies to decrease the number of uninsured Montanans
- Factors causing health insurance rates to increase above the rate of inflation
- The feasibility of recreating the Health Care Advisory Council
- Any other issues that the committee or the staff deem appropriate and relevant to the problem

SENATE BILL 162

SB 162 provides criteria for the dedication of state revenue for local governments and provides for the review of revenue dedications. As enacted, the bill:

- Adds definitions for “dedicated revenue provision” and general revenue source
- Adds guidelines for dedication of revenue
- Directs that each interim the LFC shall review dedicated revenue provisions

SENATE BILL 179

SB 179 revised laws governing budgeting and appropriations and made other related changes such as:

- Adds that the statutory appropriation for an emergency or disaster (10-3-312, MCA) may be used by any state agency designated by the governor
- Adds the requirements that:
 - 1) encumbrances of general fund for goods and services, grants, and local assistance and for non-general fund must be reviewed by the Department of Administration and a specific extension plan must be presented prior to fiscal yearend and encumbrances without an approved extension plan must be deleted at fiscal yearend;
 - 2) the Department of Administration is required to present a fiscal yearend report to the Office of Budget and Program Planning and to the Legislative Finance Committee on each general fund encumbrance remaining at fiscal yearend and on extensions approved after three years
- Eliminates the requirement to provide with the program’s budget submission a reference identifying whether the program is operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program
- Reduces the size of the base budget reduction plan agencies with more than 20 FTE must proposed with their budget submission from 85 percent to 95 percent and specified the plan must reflect the required percentage reduction by fund type for general fund and state special revenue
- Revises the requirements for presenting statements of goals and objective when submitting the Executive Budget
- Requires the operating budget for higher education funds to be recorded on the university financial system instead of the statewide budget and accounting state financial system

- Allows money remaining after a program transfer from one fiscal year to another to be retransferred only for that remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium
- Revises budget amendment laws to allow extending a budget amendment to the end of the federal fiscal year and to specify when budget amendments for a nonrecurring item must be submitted to the legislature for approval during a legislative session

Attachment A

HB 69 – ALTERNATE VERSION COMPARISON

HB 69 as Introduced by the LFC	Enacted HB 69
<p>1. <i>Small miners - eliminate the maximum bond; bond all activity.</i> All small miners are required to post bond and reclaim. All small miners must reclaim to the same standards as operating permit holders. [A \$10 annual exemption fee approved by the LFC was inadvertently omitted from the bill. An amendment will be offered]. Allow small miners to have more than two operations. Remove the prohibition on a small miner having an interest in another mine operated by a small miner. Prohibit small miners from conducting joint operations with an adjacent mining operation. Require small miners to agree in writing not to pollute “state waters” rather than the “streams” under current law.</p>	<p>Not concurred</p>
<p>2. <i>Fees.</i> The exploration license fee is increased from \$5 to \$100. The annual renewal fee is specified at \$25. The operating permit fee is increased from \$25 to \$500. The annual renewal fee is increased from \$25 to \$100.</p>	<p>Concurred</p>
<p>3. <i>Protect state from mining companies who have not shown responsibility toward reclamation.</i> A person is prohibited from mining if a bond is forfeited, DEQ receives bond proceeds from a surety, or if the surety performs reclamation.</p>	<p>Basically no substantive change from existing statute</p>
<p>4. <i>Statutorily require all bond proceeds and earnings be used for reclamation.</i> Bond proceeds are to be used for reclamation. Interest is retained in the hard-rock mining and reclamation account and in the opencut mining and reclamation account.</p>	<p>Voided by SB 449 which did the same thing</p>
<p>5. <i>Forms of acceptable bonding.</i> An irrevocable letter of credit is added to the forms of allowable performance bonds.</p>	<p>Concurred</p>
<p>6. <i>Allow bonding for unforeseen costs.</i> An additional 10% of the estimated reclamation cost to the state is required to be added to the bond for unforeseen contingencies.</p>	<p>Not concurred. DEQ may suspend license if there is danger to health, safety, or the environment and forfeit up to \$150,000 or 10% of the bond.</p>
<p>7. <i>Require that bond modifications be put in place rapidly.</i> Final bond determinations must be in place 60 days after the department determines modifications are necessary. Within another 60 days, the final bond must be posted. The modified bond must be posted before any hearing. The permit is suspended if the modified bond is not posted.</p>	<p>Preliminary bond determinations must be in place 60 days after the department determines modifications are necessary. Final bond determinations must be issued and in place within the next 60 days, unless a hearing is requested by the permittee. Unless granted an extension, the bond amount determined by the board must be in place within 30 days. The permit is suspended if the required bond amount is not posted.</p>
<p>8. <i>Provide statutory authority for the DEQ to convert bond money to trust funds.</i> DEQ is given authority to use bond proceeds to establish a trust to fund long-term compliance with air or water quality requirements.</p>	<p>Not concurred</p>
<p>9. <i>Timing for receipt of forfeited bonds.</i> Payment of 10 percent of a forfeited bond is required within 30 days after forfeiture or default.</p>	<p>Not concurred</p>
<p>10. <i>Allow a portion of the bond to be retained after reclamation.</i> The 10% contingency amount of the bond is held for 10 years after the remainder of the bond has been released to remedy actual or potential air and water violations or reclamation failures.</p>	<p>Not concurred</p>
<p>11. None</p>	<p>Allows DEQ to contract with a contractor, paid for by the applicant, for calculating reclamation plan components. Allows DEQ to contract with a contractor, one-half paid for by the mine owner, for determining the initial or subsequent bond amount.</p>