

Jerry



Montana
Department of Labor and Industry
Commissioner's Office

BRIAN SCHWEITZER, GOVERNOR
KEITH KELLY, COMMISSIONER

June 3, 2009

Cheryl Atkinson, Administrator
Office of Workforce Security
200 Constitution Avenue NW Room S-4231
Washington DC 20210

RE: Application for distribution of incentive payment

Dear Ms. Atkinson:

Enclosed please find Montana's application for the ARRA incentive payment of \$6,508,588 under the alternate base period provision as part of House Bill 645, "Implement and receipt of and appropriate federal stimulus and recovery funds", passed by the Montana Legislature and signed by Governor Schweitzer.

Montana's Legislature has also passed the Part-Time Workers and Additional Benefits for Dislocated Workers provisions. We are in the process of implementing those provisions and will send a separate application to requests Montana's ARRA incentive payments of \$13,017,176 under these provisions.

Please contact me if you have any questions or need additional information.

Sincerely,

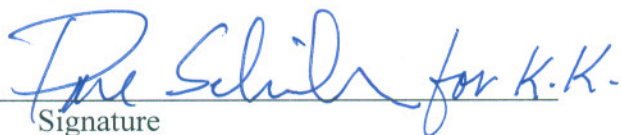
Keith Kelly for K.K.
Keith Kelly, Commissioner
Montana Department of Labor and Industry

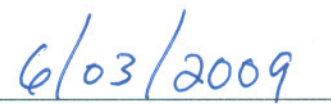
C: Dallas Regional Office

Modernization Incentive Payment Application
Base Period Provision

1. State of Montana
2. Provision of state law supporting the provision (highlighted below):
39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:
 - (2) "Base periods" means:
 - (a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;
 - (b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;
 - (c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or
 - (d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.
3. Montana hereby certifies that the above provision of state law was signed by the governor on May 14, 2009, and will become effective for claims filed on or after May 17, 2009.
4. Montana hereby certifies that the provision is permanent and is not subject to discontinuation under any circumstances other than repeal by the state legislature.
5. Montana intends to use the incentive payment to bolster the UI Trust Fund so that payments for claims using the alternate base period can be made with the least negative impact on employer tax rates.
6. House Bill 645, passed by the Montana legislature, is attached in its entirety.

I certify this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.


Signature


Date

May 14, 2009

[HB 645 text w/Gov Line Item Vetoes \(.pdf\)](#)

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby deliver to you House Bill 645, **“AN ACT IMPLEMENTING THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 . . . ,”** which I have signed into law with items “struck out,” or vetoed.

I cannot fairly discuss House Bill 645, the bill to implement the federal stimulus act in Montana, without also commenting upon House Bill 2, the general appropriations act to fund Montana state government for the coming biennium. Combined, I commend the 61st Legislature for passing a fiscally prudent budget through which Montana will live within its means while investing in important programs, such as the voter-passed children's health initiative and Montana's K-12 public schools. Of equal significance, when I submitted my proposed budget to the 61st Legislature for its consideration, I requested an ending fund balance of \$250 million. I am pleased that with passage of these two bills, more than \$250 million remains in the state's savings account in the event the State's actual revenues fall short of current projections.

Turning to House Bill 645, my item vetoes fall into three general categories: the first allows me to exercise my constitutional authority to veto items and actually see a reduction in state expenditures; the second reduces state spending by more than \$4.5 million on items which I believe are unnecessary or excessive; and the third relates to provisions in the bill which I believe are constitutionally infirm. What follows is an explanation for each individual item veto.

First, section 83 of House Bill 645 (page 56) is what I refer to as a general “re-appropriation” provision. It states that any specific item of appropriation that is vetoed or voided in the appropriations section (section 85) of the bill will be automatically appropriated to counties, cities, tribes, and schools under the formula contained in section 57. Absent my veto of section 83, my item vetoes of specific appropriations would not reduce spending in House Bill 645, but would lead to their “re-appropriation” to local governments and Montana tribes. My goal in issuing the item vetoes is to reduce state spending, not to redirect the money to enable other governmental entities to spend it.

Second, I have vetoed the following appropriations, and accompanying narrative provisions:

- Welcome Home Loan Program, \$2 million state special revenue (page A-3; sections 60 and 61, pages 49 and 50): While the language establishing this new program would lead the undiscerning reader to believe its purpose was to assist first-time home buyers, the program actually is set up to protect financial lenders by shifting the risk of certain home loans exclusively to the State. Under this temporary, new program, lenders, such as banks, could loan money to first-time home buyers for down payments and closing costs to be pledged with federal tax credits. If home buyers failed to repay their loans by June 30, 2010, the State of Montana would be obligated to purchase those loans before August 1, 2010. The effect would be that the State would step into the shoes of the lender holding a defaulted loan obligation – not a particularly desirable position. Furthermore, the State, as a creditor, would be in a subordinate position to the mortgage lender, which would be the first lien holder. To summarize, though billed as a program to assist home buyers, the real effect of the

program would be to benefit lending institutions by shifting all risk on these loans to the State. I also note that the State of Montana already has a first-time home buyer program that has been in existence since 1977, and that program is well-run and sufficiently funded.

- Rail Transit Authority, \$99,354 state general fund (page C-2): As you know, I have vetoed Senate Bill 291, establishing a Montana Railroad Development Authority. The item vetoed in House Bill 645 would fund the Authority, which I do not support, for the reasons previously stated in my veto message to Senate Bill 291.
- Meth Watch, \$500,000 state general fund (pages D-1 and D-2): The Montana Meth Project, a private undertaking, first approached me for state funding as I was preparing my budget to present to the 2007 Legislature for its consideration. Then, I was asked to support "seed money" for the project that was to become self-sustaining. My proposed budget included \$1 million for the Meth Project, and the 2007 Legislature appropriated that amount for the program for the biennium. The Meth Project has not become self-sustaining, and I was asked before the 2009 session to again include money for the project in my proposed budget. A representative of the Montana Meth Project informed me that its annual budget is \$2.1 million, and I included \$500,000 of state funding for the project in my proposal to the Legislature. Additionally, Congress recently appropriated \$1 million for the Montana Meth Project, and, consistent with my original proposal, House Bill 2, which will become law, appropriates \$500,000 to the project for the coming biennium. Again, given these economically difficult times, I do not believe the additional appropriation to this program of \$500,000 in state general funds contained in House Bill 645 is warranted, and for this reason I have vetoed that appropriation. With this item veto, the meth project will need to move toward its own goal of become self-sustaining and raise \$600,000 through private fundraising to reach its projected budget, or, like the rest of us, tighten its belt and manage with less.
- Agriculture Experiment Station - Equipment and Infrastructure, \$2 million state general fund (page E-4): House Bill 2 appropriates over \$24 million to Montana's Agriculture Experiment Stations. Particularly in these difficult economic times, I do not believe the additional \$2 million of general fund appropriations to the Agriculture Experiment Stations in House Bill 645 are necessary. I have asked parents, students, the disabled, and others across the state to tighten their belts and live within their means. I am Montana's first, and the nation's only, agricultural researcher and scientist to serve as governor and, naturally, agricultural research is close to my heart. Despite that fact, I am directing that these state-funded agriculture programs limit their expenditures and live within their means, just as the rest of Montana must do.

Third, I have issued one item veto in order to simplify the accounting and tracking of House Bill 13, the state pay plan bill, for the state's budget analysts. Both House Bill 645 and House Bill 13 contain certain identical appropriations to implement House Bill 13, although only one set of these appropriations will become law. I vetoed the duplicate provisions found in House Bill 645 (section 75, pages 54 and 55, and page A-1), and, as a result, *all* the appropriations to implement the pay plan bill will be contained in the pay plan bill, itself, House Bill 13.

My final item vetoes are found scattered throughout House Bill 645, and strike language that I believe is constitutionally defective. In six instances, House Bill 645 contains narrative that would have either voided or reduced appropriations to programs located in all three branches of government had Senate Bill 100, an unrelated bill, not become law.

Senate Bill 100, increasing distribution of coal severance tax revenue to counties, became law without my signature. Had Senate Bill 100 not passed the legislature, or had I successfully vetoed Senate Bill 100,

under the objectionable language found in House Bill 645, the demise of Senate Bill 100 would have reduced or eliminated appropriations to the legislative branch for committee work, the judicial branch for its self-help law program, and three executive branch departments for areas as diverse as worker training, historic preservation, public health standards, and information technology. Thus, funding for these six programs, which are unrelated to the coal tax distribution to counties found in Senate Bill 100, was held "hostage" to the passage of Senate Bill 100.

The Montana Constitution's "single subject" requirement prohibits the legislature from placing a "rider" in one bill in order to hold it hostage dependent upon the outcome of a separate, unrelated bill. My item veto authority, which I have exercised with regard to these objectionable provisions, extends to the veto of "riders." *Cobb v. Schweitzer*, Cause No. CDV-2005-320, Memorandum and Order of December 21, 2006, Montana First Judicial District Court, Lewis and Clark County. I believe the provisions linking the funding of the six unrelated programs to passage or failure of Senate Bill 100 are constitutionally impermissible riders.

I have taken the step of exercising this item veto authority as a notice to the Legislature of my constitutional objections to these provisions. I note that in 2007, I also observed similar provisions in bills winding their way through the Legislature, however those constitutionally problematic "contingent voidness" provisions did not reach my desk. While I recognize that there is a proper use of "contingent voidness" provisions in legislation, when those provisions are contained in wholly unrelated pieces of legislation, are outside the "single subject" rule, and are for purposes solely of political leveraging, I do not believe they meet the constitutional standard. To the extent these objectionable provisions were inserted into House Bill 645 to effect my decision on whether to sign, veto, or let become law Senate Bill 100, I also believe they encroached upon my veto authority. So that you also know, my decision to let Senate Bill 100 become law was in no way based upon these troubling provisions in House Bill 645.

In closing, I thank the Legislature for doing its job. Now it is time for me to continue with the business of running the executive branch of government within the policy and budget framework the Legislature established for the State of Montana for the next two years.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

ment for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the current fund, as 2-102, for distribution to the unit receiving the grant or under the contract."

on 28. Section 39-51-201, MCA, is amended to read:

39-51-201. **General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

"Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

"Base period" means:

the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first dual's benefit year;

~~however,~~ in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, ~~the base period is~~ the period applicable employment law of the paying state; or

~~or~~ for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a if another state or the United States, ~~the base period means~~ the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment within 24 months of the date on which the individual's disability was incurred.

"Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor states, the base period is the period applicable under the unemployment law of the paying state.

"Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

"Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

"Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

"Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

"Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

"Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or

employer's family, including but not limited to housecleaning and yard work.

the term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

"Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or carrying the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was directly or indirectly employed by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

"Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment or any other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

"Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits payable under this chapter must be paid.

"Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or pled guilty to, which demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

"Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

"Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

"Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

a) "Institution of higher education", for the purposes of this part, means an educational institution that:

1. admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

2. is legally authorized in this state to provide a program of education beyond high school;

3. provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree or program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

4. is a public or other nonprofit institution.

All universities in this state are institutions of higher education for purposes of this part.

"Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits

censed to practice in this state as:

physician under Title 37, chapter 3;

dentist under Title 37, chapter 4;

n advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in

physical therapist under Title 37, chapter 11;

chiropractor under Title 37, chapter 12;

clinical psychologist under Title 37, chapter 17; or

physician assistant under Title 37, chapter 20; or

with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the
and in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under
it be paid.

a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid
other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the
term includes but is not limited to:

commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

gratuity or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits
plan; and

tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

The term does not include:

the amount of any payment made by the employer for employees, if the payment was made for:

retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

sickness or accident disability under a workers' compensation policy;

medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

death, including life insurance for the employee or the employee's immediate family;

employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

no-additional-cost service; or

age subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

"Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

"Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 29. Part-time work search -- eligibility for benefits. (1) Except as provided in subsection (2), an individual may not be denied regular unemployment compensation benefits

if the individual is seeking only part-time work, as that term is defined in rules adopted by the department.

In order to be qualified for benefits under subsection (1), the majority of the individual's workweeks in the base period must have been part-time.

Section 30. Participation in worker training program -- eligibility for training benefits. (1) Subject to the requirements of this section, training benefits are available to an individual

who is entitled to all rights to regular unemployment compensation benefits and who is attending an approved worker training program.

An unemployed individual who is participating and making satisfactory progress in a state-approved training program or a job training program authorized by the Workforce

Investment Act of 1998 that is necessary for the individual's reemployment is eligible to receive training benefits if, as determined by the department:

the individual was:

separated from a declining occupation; or

involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment;

the training enhances the individual's marketable skills and earning power; and

re training is targeted to those industries or skills that are in demand within the labor market.

enefits must be paid under this section at the individual's average weekly benefit amount during the applicable benefit year and under the same terms and conditions as regular

enefits are payable under this section only for weeks during which the individual is attending an approved training program.

n employer's account may not be charged for payment of benefits to an individual under this section.

on 31. Section 52-3-115, MCA, is amended to read:

-115. Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided

i) The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will
 ontanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by
 d appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs
 additional level, ~~as used in 53-6-1204~~, of appropriations for those services.

is used in subsection (2)(a), the phrase "trended traditional level of appropriations" means the appropriation amounts, including supplemental appropriations, as those amounts
 on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

ie department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.
 terest and income earned on money in the trust fund must be retained within the fund except as provided in this section. Until the year 2015, if assets in the fund reach the
 ts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

hen the fund balance reaches \$20 million, 50% of the interest earned may be appropriated.

hen the fund balance reaches \$50 million, 60% of the interest earned may be appropriated.

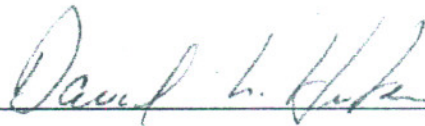
hen the fund balance reaches \$100 million, 80% of the interest earned may be appropriated.

and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

ie department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210."

n 32. Section 53-4-212, MCA, is amended to read:

I hereby certify that the within bill,
HB 0645, originated in the House.



Chief Clerk of the House



Speaker of the House

Signed this 4th day
of May, 2009.



President of the Senate

Signed this 5th day
of May, 2009.