

## 1 HOUSE BILL NO. 47

2 INTRODUCED BY LARSON

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF  
6 PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT  
7 BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT  
8 HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY  
9 FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT  
10 SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT;  
11 CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED  
12 AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT;  
13 CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE  
14 MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR  
15 FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE  
16 PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212,  
17 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601,  
18 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING  
19 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22  
23 **Section 1.** Section 2-15-1705, MCA, is amended to read:

24 **"2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision**  
25 **-- quasi-judicial.** (1) There is a board of personnel appeals.

26 (2) The board is allocated to the department of labor and industry for administrative purposes only  
27 as prescribed in 2-15-121.

28 (3) (a) The board consists of five members appointed by the governor as follows:

29 (i) two members who are full-time management employees in organizations with collective  
30 bargaining units or who represent management in collective bargaining activities;

1 (ii) two members who are full-time employees or elected officials of a labor union or an association  
2 recognized by the board; and

3 (iii) one other member having general labor-management experience, who ~~shall be~~ is the chairperson  
4 presiding officer.

5 (b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve  
6 the interests of the organizations they represent.

7 (4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board,  
8 the remaining members of the board shall select an individual, who ~~shall be a person who~~ qualifies under  
9 subsection (3)(a)(iii), to serve in the place of the ~~chairperson~~ presiding officer in that proceeding, ~~and he~~  
10 The individual selected shall participate in the ~~decision~~ decisions in that proceeding. There ~~shall~~ may be  
11 only one ~~additional chairperson~~ presiding officer replacement appointed and serving at any one time. The  
12 individual selected is entitled to the same compensation and per diem that members of the board receive.

13 (5) When a board member other than the presiding officer is unable to participate in a proceeding  
14 before the board, the remaining members of the board shall select a substitute member who possesses the  
15 qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent  
16 board member. The substitute member shall serve in place of the absent board member and participate in  
17 the decisions in that proceeding. A substitute board member is entitled to the same compensation and per  
18 diem that members of the board receive.

19 (6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is  
20 sufficient to adopt any resolution, motion, or other decision.

21 ~~(6)~~(7) The board is designated a quasi-judicial board for purposes of 2-15-124."  
22

23 **Section 2.** Section 2-18-1002, MCA, is amended to read:

24 **"2-18-1002. Grievance procedure -- hearing -- order.** (1) The board of personnel appeals provided  
25 for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

26 (2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that  
27 the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such to~~  
28 require an action of by the department ~~as will to~~ resolve the employee's grievance. In any a hearing, the  
29 board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by  
30 telephone or by videoconference."

1           **Section 3.** Section 2-18-1012, MCA, is amended to read:

2           **"2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the  
3 hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate  
4 agency or agencies of state government ~~requiring such~~ to require an action ~~as will~~ to resolve the  
5 employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of  
6 evidence. The hearing may be conducted by telephone or by videoconference."

7  
8           **Section 4.** Section 18-2-407, MCA, is amended to read:

9           **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,  
10 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as  
11 established under the public works contract shall forfeit to the department a penalty at a rate of up to 20%  
12 of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected  
13 by the department under this section must be deposited in the ~~unemployment insurance administration~~  
14 ~~account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be  
15 used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the  
16 amount of wages owed plus \$25 a day for each day that the employee was underpaid.

17           (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and  
18 industry that there is insufficient money due to the contractor or the employer under the terms of the  
19 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the  
20 filing of notice of completion of the project and its acceptance by the contracting agency, maintain an  
21 action in district court to recover all penalties and forfeitures due. This part does not prevent the individual  
22 worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid  
23 workers from maintaining an action for recovery of the wages due under the contract as provided in Title  
24 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court  
25 rather than to the board of personnel appeals."

26  
27           **Section 5.** Section 39-3-212, MCA, is amended to read:

28           **"39-3-212. Court enforcement of administrative decision.** (1) A department default order, a  
29 decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if  
30 judicial review is not sought, may be enforced by application by the commissioner to a district court for an

1 order or judgment enforcing the decision. The commissioner shall apply to the district court where the  
 2 employer has its principal place of business or in the first judicial district of the state. A proceeding under  
 3 this section is not a review of the validity of the administrative decision.

4 (2) If judicial review is sought, the district court may issue an order or a judgment enforcing the  
 5 decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing  
 6 rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment  
 7 enforcing the decision of the hearings officer."

8  
 9 **Section 6.** Section 39-3-216, MCA, is amended to read:

10 **"39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the  
 11 employer does not appeal the determination, the department may enter a default order against the employer  
 12 for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The  
 13 department may enforce the default order pursuant to 39-3-212.

14 (2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail  
 15 the determination to the parties at the last-known address of each party. If a party appeals the  
 16 department's determination within 15 days after the determination is mailed by the department, a hearing  
 17 must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that  
 18 service need not be made as prescribed for civil actions in the district court and the hearings officer is not  
 19 bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by  
 20 videoconference. The department shall by rule provide relief for a person who does not receive the  
 21 determination by mail.

22 (3) The decision of the hearings officer is final unless further review is initiated pursuant to  
 23 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may  
 24 be extended by the board for good cause."

25  
 26 **Section 7.** Section 39-3-217, MCA, is amended to read:

27 **"39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the  
 28 party may appeal the decision to the board. The hearing before the board is for review only, ~~and the~~ may  
 29 be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not  
 30 allowed unless the board finds that good cause is shown for the failure to produce the evidence before the

1 hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to  
 2 each interested party at ~~his~~ the party's last-known address, and to the department. The decision is final  
 3 unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4,  
 4 part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."

5  
 6 **Section 8.** Section 39-3-403, MCA, is amended to read:

7 "**39-3-403. Regulations Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise  
 8 administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect~~  
 9 ~~upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may~~  
 10 ~~obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall~~  
 11 ~~thereupon set such matter for hearing in the county of residence of such protestant within 30 days after~~  
 12 ~~receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative~~  
 13 ~~regulations as the evidence produced at said hearing shall justify."~~

14  
 15 **Section 9.** Section 39-31-105, MCA, is amended to read:

16 "**39-31-105. Administrative procedure act applicable-- conduct of hearing.** All hearings and appeals  
 17 ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.  
 18 Hearings and appeals may be conducted by telephone or by videoconference."

19  
 20 **Section 10.** Section 39-31-309, MCA, is amended to read:

21 "**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and  
 22 place of hearings.

23 (2) The public employer and the exclusive representative are the only proper parties to factfinding  
 24 proceedings.

25 (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings  
 26 conducted by the fact finder. The fact finder may administer oaths.

27 (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the  
 28 fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall  
 29 serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make  
 30 this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the

1 report is submitted to the parties, the report must be made public.

2 (5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings  
3 must be equally borne by ~~the board and~~ the parties concerned. When the board initiates factfinding, the  
4 cost of factfinding proceedings must be equally borne by the board and the parties.

5 (6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate  
6 the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact-finder.~~"

7

8 NEW SECTION. Section 11. Repealer. Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604,  
9 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

10

11 NEW SECTION. Section 12. Applicability. [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals  
12 requested on or after [the effective date of this act].

13

14 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0047, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

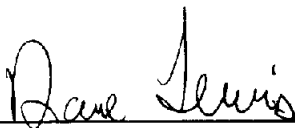
An act generally revising laws relating to the Board of Personnel Appeals; allowing substitute management and labor representatives at board proceedings; authorizing the board and its hearing officers to conduct hearing and appeals by telephone or by videoconference; requiring that money forfeited for failure to pay standard prevailing wages be deposited in the employment security account rather than in the unemployment insurance administration account; clarifying that decisions by the board and by a hearings officer that are reviewed and affirmed by a district court may be reduced to an enforceable order or judgment; conforming rulemaking authority of the commissioner of labor and industry to the montana administrative procedure act; eliminating the board's cost sharing for fact finding not initiated by the board.

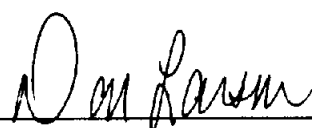
Assumptions:

1. With the passage of this legislation, there will be no fiscal impact.
2. A portion of this legislation is in response to Judge McCarter's decision WCC #9401-6985 of 1994, which called into question telephonic hearings because they are not explicitly allowed in statute.
3. If this legislation is not approved, there would be a projected state special revenue employment security account cost of \$47,936 in FY96 and \$35,472 in FY97 for 1.00 FTE new hearings officer and travel for hearings officers. Without this legislation, hearings officers will be required to conduct hearings at locations across the state as agreed upon by all parties. Wage and hour and collective bargaining hearings would require at least seven hearings officers travelling, each making about eight round trips per year.

FISCAL IMPACT:

None, if this legislation is approved. However, should this legislation not be approved the Department of Labor and Industry would experience increased costs of about \$47,936 in FY96 and \$35,472 in FY97.

 1-6-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
DON LARSON, PRIMARY SPONSOR      DATE

Fiscal Note for HB0047, as introduced

**HB 47**

APPROVED BY COMMITTEE  
ON BUSINESS AND LABOR

## 1 HOUSE BILL NO. 47

2 INTRODUCED BY LARSON

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF  
6 PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT  
7 BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT  
8 HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY  
9 FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT  
10 SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT;  
11 CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED  
12 AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT;  
13 CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE  
14 MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR  
15 FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE  
16 PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212,  
17 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601,  
18 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING  
19 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
22

23 Section 1. Section 2-15-1705, MCA, is amended to read:

24 "2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision  
25 -- quasi-judicial. (1) There is a board of personnel appeals.26 (2) The board is allocated to the department of labor and industry for administrative purposes only  
27 as prescribed in 2-15-121.

28 (3) (a) The board consists of five members appointed by the governor as follows:

29 (i) two members who are full-time management employees in organizations with collective  
30 bargaining units or who represent management in collective bargaining activities;



1 (ii) two members who are full-time employees or elected officials of a labor union or an association  
2 recognized by the board; and

3 (iii) one other member having general labor-management experience, who ~~shall be~~ is the chairperson  
4 presiding officer.

5 (b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve  
6 the interests of the organizations they represent.

7 (4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board,  
8 the remaining members of the board shall select an individual, who ~~shall be a person who~~ qualifies under  
9 subsection (3)(a)(iii), to serve in the place of the ~~chairperson~~ presiding officer in that proceeding, ~~and he~~  
10 The individual selected shall participate in the decision decisions in that proceeding. There ~~shall~~ may be  
11 only one ~~additional chairperson~~ presiding officer replacement appointed and serving at any one time. The  
12 individual selected is entitled to the same compensation and per diem that members of the board receive.

13 (5) When a board member other than the presiding officer is unable to participate in a proceeding  
14 before the board, the remaining members of the board shall select a substitute member who possesses the  
15 qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent  
16 board member. The substitute member shall serve in place of the absent board member and participate in  
17 the decisions in that proceeding. A substitute board member is entitled to the same compensation and per  
18 diem that members of the board receive.

19 (6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is  
20 sufficient to adopt any resolution, motion, or other decision.

21 ~~(6)~~(7) The board is designated a quasi-judicial board for purposes of 2-15-124."  
22

23 **Section 2.** Section 2-18-1002, MCA, is amended to read:

24 "**2-18-1002. Grievance procedure -- hearing -- order.** (1) The board of personnel appeals provided  
25 for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

26 (2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that  
27 the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such~~ to  
28 require an action of by the department ~~as will~~ to resolve the employee's grievance. In ~~any~~ a hearing, the  
29 board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by  
30 telephone or by videoconference."

1           **Section 3.** Section 2-18-1012, MCA, is amended to read:

2           **"2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the  
3 hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate  
4 agency or agencies of state government ~~requiring such~~ to require an action as will to resolve the  
5 employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of  
6 evidence. The hearing may be conducted by telephone or by videoconference."

7

8           **Section 4.** Section 18-2-407, MCA, is amended to read:

9           **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,  
10 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as  
11 established under the public works contract shall forfeit to the department a penalty at a rate of up to 20%  
12 of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected  
13 by the department under this section must be deposited in the ~~unemployment insurance administration~~  
14 ~~account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be  
15 used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the  
16 amount of wages owed plus \$25 a day for each day that the employee was underpaid.

17           (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and  
18 industry that there is insufficient money due to the contractor or the employer under the terms of the  
19 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the  
20 filing of notice of completion of the project and its acceptance by the contracting agency, maintain an  
21 action in district court to recover all penalties and forfeitures due. This part does not prevent the individual  
22 worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid  
23 workers from maintaining an action for recovery of the wages due under the contract as provided in Title  
24 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court  
25 rather than to the board of personnel appeals."

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27           **Section 5.** Section 39-3-212, MCA, is amended to read:

28           **"39-3-212. Court enforcement of administrative decision.** (1) A department default order, a  
29 decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if  
30 judicial review is not sought, may be enforced by application by the commissioner to a district court for an

1 order or judgment enforcing the decision. The commissioner shall apply to the district court where the  
 2 employer has its principal place of business or in the first judicial district of the state. A proceeding under  
 3 this section is not a review of the validity of the administrative decision.

4 (2) If judicial review is sought, the district court may issue an order or a judgment enforcing the  
 5 decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing  
 6 rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment  
 7 enforcing the decision of the hearings officer."

8

9 **Section 6.** Section 39-3-216, MCA, is amended to read:

10 **"39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the  
 11 employer does not appeal the determination, the department may enter a default order against the employer  
 12 for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The  
 13 department may enforce the default order pursuant to 39-3-212.

14 (2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail  
 15 the determination to the parties at the last-known address of each party. If a party appeals the  
 16 department's determination within 15 days after the determination is mailed by the department, a hearing  
 17 must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that  
 18 service need not be made as prescribed for civil actions in the district court and the hearings officer is not  
 19 bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by  
 20 videoconference. The department shall by rule provide relief for a person who does not receive the  
 21 determination by mail.

22 (3) The decision of the hearings officer is final unless further review is initiated pursuant to  
 23 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may  
 24 be extended by the board for good cause."

25

26 **Section 7.** Section 39-3-217, MCA, is amended to read:

27 **"39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the  
 28 party may appeal the decision to the board. The hearing before the board is for review only, ~~and~~ the may  
 29 be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not  
 30 allowed unless the board finds that good cause is shown for the failure to produce the evidence before the

1 hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to  
 2 each interested party at ~~his~~ the party's last-known address, and to the department. The decision is final  
 3 unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4,  
 4 part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."  
 5

6 **Section 8.** Section 39-3-403, MCA, is amended to read:

7 "**39-3-403. ~~Regulations~~ Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise  
 8 administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect~~  
 9 ~~upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may~~  
 10 ~~obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall~~  
 11 ~~thereupon set such matter for hearing in the county of residence of such protestant within 30 days after~~  
 12 ~~receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative~~  
 13 ~~regulations as the evidence produced at said hearing shall justify."~~

14  
 15 **Section 9.** Section 39-31-105, MCA, is amended to read:

16 "**39-31-105. ~~Administrative procedure act applicable--~~ conduct of hearing.** All hearings and appeals  
 17 ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.  
 18 Hearings and appeals may be conducted by telephone or by videoconference."

19  
 20 **Section 10.** Section 39-31-309, MCA, is amended to read:

21 "**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and  
 22 place of hearings.

23 (2) The public employer and the exclusive representative are the only proper parties to factfinding  
 24 proceedings.

25 (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings  
 26 conducted by the fact finder. The fact finder may administer oaths.

27 (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the  
 28 fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall  
 29 serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make  
 30 this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the

1 report is submitted to the parties, the report must be made public.

2 (5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings  
3 must be equally borne by ~~the board and~~ the parties ~~concerned~~. When the board initiates factfinding, the  
4 cost of factfinding proceedings must be equally borne by the board and the parties.

5 (6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate  
6 the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact finder.~~"

7

8 NEW SECTION. Section 11. Repealer. Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604,  
9 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

10

11 NEW SECTION. Section 12. Applicability. [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals  
12 requested on or after [the effective date of this act].

13

14 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

15

-END-

## 1 HOUSE BILL NO. 47

2 INTRODUCED BY LARSON

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF  
6 PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT  
7 BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT  
8 HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY  
9 FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT  
10 SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT;  
11 CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED  
12 AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT;  
13 CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE  
14 MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR  
15 FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE  
16 PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212,  
17 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601,  
18 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING  
19 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22  
23 **Section 1.** Section 2-15-1705, MCA, is amended to read:

24 **"2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision**  
25 **-- quasi-judicial. (1) There is a board of personnel appeals.**

26 **(2) The board is allocated to the department of labor and industry for administrative purposes only**  
27 **as prescribed in 2-15-121.**

28 **(3) (a) The board consists of five members appointed by the governor as follows:**

29 **(i) two members who are full-time management employees in organizations with collective**  
30 **bargaining units or who represent management in collective bargaining activities;**

1 (ii) two members who are full-time employees or elected officials of a labor union or an association  
2 recognized by the board; and

3 (iii) one other member having general labor-management experience, who ~~shall be~~ is the chairperson  
4 presiding officer.

5 (b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve  
6 the interests of the organizations they represent.

7 (4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board,  
8 the remaining members of the board shall select an individual, who ~~shall be a person who~~ qualifies under  
9 subsection (3)(a)(iii), to serve in the place of the ~~chairperson~~ presiding officer in that proceeding, ~~and he~~  
10 The individual selected shall participate in the ~~decision~~ decisions in that proceeding. There ~~shall~~ may be  
11 only one ~~additional chairperson~~ presiding officer replacement appointed and serving at any one time. The  
12 individual selected is entitled to the same compensation and per diem that members of the board receive.

13 (5) When a board member other than the presiding officer is unable to participate in a proceeding  
14 before the board, the remaining members of the board shall select a substitute member who possesses the  
15 qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent  
16 board member. The substitute member shall serve in place of the absent board member and participate in  
17 the decisions in that proceeding. A substitute board member is entitled to the same compensation and per  
18 diem that members of the board receive.

19 (6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is  
20 sufficient to adopt any resolution, motion, or other decision.

21 ~~(6)(7)~~ The board is designated a quasi-judicial board for purposes of 2-15-124."

22

23 **Section 2.** Section 2-18-1002, MCA, is amended to read:

24 **"2-18-1002. Grievance procedure -- hearing -- order.** (1) The board of personnel appeals provided  
25 for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

26 (2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that  
27 the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such to~~  
28 require an action of by the department ~~as will to~~ resolve the employee's grievance. In ~~any a~~ hearing, the  
29 board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by  
30 telephone or by videoconference."

1           **Section 3.** Section 2-18-1012, MCA, is amended to read:

2           **"2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the  
3 hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate  
4 agency or agencies of state government ~~requiring such~~ to require an action ~~as will~~ to resolve the  
5 employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of  
6 evidence. The hearing may be conducted by telephone or by videoconference."

7  
8           **Section 4.** Section 18-2-407, MCA, is amended to read:

9           **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,  
10 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as  
11 established under the public works contract shall forfeit to the department a penalty at a rate of up to 20%  
12 of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected  
13 by the department under this section must be deposited in the ~~unemployment insurance administration~~  
14 ~~account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be  
15 used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the  
16 amount of wages owed plus \$25 a day for each day that the employee was underpaid.

17           (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and  
18 industry that there is insufficient money due to the contractor or the employer under the terms of the  
19 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the  
20 filing of notice of completion of the project and its acceptance by the contracting agency, maintain an  
21 action in district court to recover all penalties and forfeitures due. This part does not prevent the individual  
22 worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid  
23 workers from maintaining an action for recovery of the wages due under the contract as provided in Title  
24 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court  
25 rather than to the board of personnel appeals."

26  
27           **Section 5.** Section 39-3-212, MCA, is amended to read:

28           **"39-3-212. Court enforcement of administrative decision.** (1) A department default order, a  
29 decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if  
30 judicial review is not sought, may be enforced by application by the commissioner to a district court for an



1 order or judgment enforcing the decision. The commissioner shall apply to the district court where the  
 2 employer has its principal place of business or in the first judicial district of the state. A proceeding under  
 3 this section is not a review of the validity of the administrative decision.

4 (2) If judicial review is sought, the district court may issue an order or a judgment enforcing the  
 5 decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing  
 6 rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment  
 7 enforcing the decision of the hearings officer."

8

9 **Section 6.** Section 39-3-216, MCA, is amended to read:

10 **"39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the  
 11 employer does not appeal the determination, the department may enter a default order against the employer  
 12 for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The  
 13 department may enforce the default order pursuant to 39-3-212.

14 (2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail  
 15 the determination to the parties at the last-known address of each party. If a party appeals the  
 16 department's determination within 15 days after the determination is mailed by the department, a hearing  
 17 must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that  
 18 service need not be made as prescribed for civil actions in the district court and the hearings officer is not  
 19 bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by  
 20 videoconference. The department shall by rule provide relief for a person who does not receive the  
 21 determination by mail.

22 (3) The decision of the hearings officer is final unless further review is initiated pursuant to  
 23 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may  
 24 be extended by the board for good cause."

25

26 **Section 7.** Section 39-3-217, MCA, is amended to read:

27 **"39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the  
 28 party may appeal the decision to the board. The hearing before the board is for review only, ~~and the~~ may  
 29 be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not  
 30 allowed unless the board finds that good cause is shown for the failure to produce the evidence before the

1 hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to  
 2 each interested party at ~~his~~ the party's last-known address, and to the department. The decision is final  
 3 unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4,  
 4 part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."

5  
 6 **Section 8.** Section 39-3-403, MCA, is amended to read:

7 **"39-3-403. Regulations Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise  
 8 administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect~~  
 9 ~~upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may~~  
 10 ~~obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall~~  
 11 ~~thereupon set such matter for hearing in the county of residence of such protestant within 30 days after~~  
 12 ~~receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative~~  
 13 ~~regulations as the evidence produced at said hearing shall justify."~~

14  
 15 **Section 9.** Section 39-31-105, MCA, is amended to read:

16 **"39-31-105. Administrative procedure act applicable-- conduct of hearing.** All hearings and appeals  
 17 ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.  
 18 Hearings and appeals may be conducted by telephone or by videoconference."

19  
 20 **Section 10.** Section 39-31-309, MCA, is amended to read:

21 **"39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and  
 22 place of hearings.

23 (2) The public employer and the exclusive representative are the only proper parties to factfinding  
 24 proceedings.

25 (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings  
 26 conducted by the fact finder. The fact finder may administer oaths.

27 (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the  
 28 fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall  
 29 serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make  
 30 this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the

1 report is submitted to the parties, the report must be made public.

2 (5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings  
3 must be equally borne by the board and the parties concerned. When the board initiates factfinding, the  
4 cost of factfinding proceedings must be equally borne by the board and the parties.

5 (6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate  
6 the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact finder.~~"

7

8 NEW SECTION. Section 11. Repealer. Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604,  
9 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

10

11 NEW SECTION. Section 12. Applicability. [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals  
12 requested on or after [the effective date of this act].

13

14 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

15


-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 19, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 47 (third reading copy -- blue), respectfully report that HB 47 be amended as follows and as so amended be concurred in.

Signed:   
Senator Thomas F. Heating, Chair


That such amendments read:

1. Page 5, line 18.


Following: "videoconference"

Insert: ", with the consent of the necessary parties"

-END-

  
SA

Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

161551SC.SRF

HB 47

## 1 HOUSE BILL NO. 47

2 INTRODUCED BY LARSON

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF  
 6 PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT  
 7 BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT  
 8 HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY  
 9 FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT  
 10 SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT;  
 11 CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED  
 12 AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT;  
 13 CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE  
 14 MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR  
 15 FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE  
 16 PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212,  
 17 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601,  
 18 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING  
 19 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
 20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 22

23 **Section 1.** Section 2-15-1705, MCA, is amended to read:

24 **"2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision**  
 25 **-- quasi-judicial.** (1) There is a board of personnel appeals.

26 (2) The board is allocated to the department of labor and industry for administrative purposes only  
 27 as prescribed in 2-15-121.

28 (3) (a) The board consists of five members appointed by the governor as follows:

29 (i) two members who are full-time management employees in organizations with collective  
 30 bargaining units or who represent management in collective bargaining activities;

1 (ii) two members who are full-time employees or elected officials of a labor union or an association  
2 recognized by the board; and

3 (iii) one other member having general labor-management experience, who ~~shall be~~ is the chairperson  
4 presiding officer.

5 (b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve  
6 the interests of the organizations they represent.

7 (4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board,  
8 the remaining members of the board shall select an individual, who ~~shall be a person who~~ qualifies under  
9 subsection (3)(a)(iii), to serve in the place of the ~~chairperson~~ presiding officer in that proceeding. ~~and he~~  
10 The individual selected shall participate in the decision decisions in that proceeding. There shall may be  
11 only one additional chairperson presiding officer replacement appointed and serving at any one time. The  
12 individual selected is entitled to the same compensation and per diem that members of the board receive.

13 (5) When a board member other than the presiding officer is unable to participate in a proceeding  
14 before the board, the remaining members of the board shall select a substitute member who possesses the  
15 qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent  
16 board member. The substitute member shall serve in place of the absent board member and participate in  
17 the decisions in that proceeding. A substitute board member is entitled to the same compensation and per  
18 diem that members of the board receive.

19 (6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is  
20 sufficient to adopt any resolution, motion, or other decision.

21 ~~(6)~~(7) The board is designated a quasi-judicial board for purposes of 2-15-124."

22  
23 **Section 2.** Section 2-18-1002, MCA, is amended to read:

24 **"2-18-1002. Grievance procedure - hearing -- order.** (1) The board of personnel appeals provided  
25 for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

26 (2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that  
27 the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such to~~  
28 require an action of by the department ~~as will to~~ resolve the employee's grievance. In ~~any a~~ hearing, the  
29 board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by  
30 telephone or by videoconference."

1           **Section 3.** Section 2-18-1012, MCA, is amended to read:

2           "**2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the  
3 hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate  
4 agency or agencies of state government ~~requiring such~~ to require an action as will to resolve the  
5 employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of  
6 evidence. The hearing may be conducted by telephone or by videoconference."

7  
8           **Section 4.** Section 18-2-407, MCA, is amended to read:

9           "**18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,  
10 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as  
11 established under the public works contract shall forfeit to the department a penalty at a rate of up to 20%  
12 of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected  
13 by the department under this section must be deposited in the ~~unemployment insurance administration~~  
14 ~~account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be  
15 used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the  
16 amount of wages owed plus \$25 a day for each day that the employee was underpaid.

17           (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and  
18 industry that there is insufficient money due to the contractor or the employer under the terms of the  
19 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the  
20 filing of notice of completion of the project and its acceptance by the contracting agency, maintain an  
21 action in district court to recover all penalties and forfeitures due. This part does not prevent the individual  
22 worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid  
23 workers from maintaining an action for recovery of the wages due under the contract as provided in Title  
24 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court  
25 rather than to the board of personnel appeals."

26  
27           **Section 5.** Section 39-3-212, MCA, is amended to read:

28           "**39-3-212. Court enforcement of administrative decision.** (1) A department default order, a  
29 decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if  
30 judicial review is not sought, may be enforced by application by the commissioner to a district court for an

1 order or judgment enforcing the decision. The commissioner shall apply to the district court where the  
 2 employer has its principal place of business or in the first judicial district of the state. A proceeding under  
 3 this section is not a review of the validity of the administrative decision.

4 (2) If judicial review is sought, the district court may issue an order or a judgment enforcing the  
 5 decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing  
 6 rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment  
 7 enforcing the decision of the hearings officer."

8  
 9 **Section 6.** Section 39-3-216, MCA, is amended to read:

10 **"39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the  
 11 employer does not appeal the determination, the department may enter a default order against the employer  
 12 for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The  
 13 department may enforce the default order pursuant to 39-3-212.

14 (2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail  
 15 the determination to the parties at the last-known address of each party. If a party appeals the  
 16 department's determination within 15 days after the determination is mailed by the department, a hearing  
 17 must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that  
 18 service need not be made as prescribed for civil actions in the district court and the hearings officer is not  
 19 bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by  
 20 videoconference. The department shall by rule provide relief for a person who does not receive the  
 21 determination by mail.

22 (3) The decision of the hearings officer is final unless further review is initiated pursuant to  
 23 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may  
 24 be extended by the board for good cause."

25  
 26 **Section 7.** Section 39-3-217, MCA, is amended to read:

27 **"39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the  
 28 party may appeal the decision to the board. The hearing before the board is for review only, and ~~the~~ may  
 29 be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not  
 30 allowed unless the board finds that good cause is shown for the failure to produce the evidence before the



1 hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to  
 2 each interested party at ~~his~~ the party's last-known address, and to the department. The decision is final  
 3 unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4,  
 4 part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."

5  
 6 **Section 8.** Section 39-3-403, MCA, is amended to read:

7 "**39-3-403. Regulations Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise  
 8 administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect~~  
 9 ~~upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may~~  
 10 ~~obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall~~  
 11 ~~thereupon set such matter for hearing in the county of residence of such protestant within 30 days after~~  
 12 ~~receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative~~  
 13 ~~regulations as the evidence produced at said hearing shall justify."~~

14  
 15 **Section 9.** Section 39-31-105, MCA, is amended to read:

16 "**39-31-105. Administrative procedure act applicable -- conduct of hearing.** All hearings and  
 17 appeals ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative  
 18 Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, WITH THE  
 19 CONSENT OF THE NECESSARY PARTIES."

20  
 21 **Section 10.** Section 39-31-309, MCA, is amended to read:

22 "**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and  
 23 place of hearings.

24 (2) The public employer and the exclusive representative are the only proper parties to factfinding  
 25 proceedings.

26 (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings  
 27 conducted by the fact finder. The fact finder may administer oaths.

28 (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the  
 29 fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall  
 30 serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make

1 this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the  
2 report is submitted to the parties, the report must be made public.

3 (5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings  
4 must be equally borne by ~~the board and~~ the parties concerned. When the board initiates factfinding, the  
5 cost of factfinding proceedings must be equally borne by the board and the parties.

6 (6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate  
7 the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact finder.~~"

8

9 NEW SECTION. Section 11. Repealer. Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604,  
10 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

11

12 NEW SECTION. Section 12. Applicability. [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals  
13 requested on or after [the effective date of this act].

14

15 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

16

-END-