BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII pertaining to the implementation of the Montana Employment Advancement Right Now Program Act ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION )

TO: All Concerned Persons

1. On December 2, 2020, at 2:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

   (a) Join Zoom Meeting, https://mt-gov.zoom.us/j/94258673882
       Meeting ID: 942 5867 3882; or
   (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,
       Meeting ID: 942 5867 3882

   The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 25, 2020, to advise us of the nature of the accommodation that you need. Please contact Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail nburbridge@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is a reasonable necessity to adopt these rules to implement the Montana Employment Advancement Right Now (EARN) Program Act, Title 39, chapter 11, part 3, MCA, that was passed by the 2019 Montana Legislature.

   The Montana Employment Advancement Right Now program is intended to promote the creation of industry sector partnerships and public-private collaboration by funding one or more pilot programs from industry-led partnerships to impact current industry workforce challenges by either increased skills training and/or job readiness assistance for target populations.

   The Montana EARN grant is intended for projects designed to solve local or regional challenges related to applicant pipeline skills gaps or applicant pipeline sector workforce shortages. The grant is also intended to encourage sector
partnerships within regions and across the state. The EARN program is designed to encourage long-term statewide economic growth by assisting employers to train workers and fill positions, as well as to ensure meaningful economic advancement for trainees.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in [NEW RULES I through VIII], the following definitions apply:

(1) "Application" means the grant application submitted by a lead applicant to the department seeking an EARN program grant.

(2) "Business-related nonprofit organizations" means an organization such as a trade association or organizations functioning as a workforce intermediary for the express purpose of serving the needs of an industry or industry-sector partnership.

(3) "Department" means the Department of Labor and Industry.

(4) "EARN program grant" means a grant awarded by the department pursuant to 39-11-305, MCA.

(5) "Industry workforce shortages" means a documented shortage of skilled employees for a sustained period of time in a particular target industry.

(6) "Lead applicant" mean a business, a business-related nonprofit organization, or an economic development agency that is a member of the strategic industry partnership. The lead applicant is an entity recognized by the state and must be in good standing with the Montana Secretary of State or local tribal government. The lead applicant shall act as the fiscal agent for receiving any awarded grant funds.

(7) "Matching funds" means any amount of direct financial or in-kind contribution provided by a member of the strategic industry partnership that is identified in the application. Matching funds can be at any amount in relation to the amount requested in the application.

(8) "Skills gap" means the difference in skills required for an occupation in a particular target industry and the skills possessed by the target population.

AUTH: 39-11-305, MCA

NEW RULE II GRANT APPLICATION SUBMISSION (1) A lead applicant shall submit a written application to the department to be considered for an EARN program grant. The application may be submitted to the department by e-mail or mail:

(a) An e-mail application shall be submitted to MontanaEARN@mt.gov. An e-mail submission shall be in .PDF format. Any submission totaling over ten MB shall be sent to the department over the State File Transfer Service.

(b) A mail application shall be mailed to the Department of Labor and Industry, Montana EARN Program Grants, P.O. Box 1728, Helena MT 59624-1728.

(2) An application is submitted for evaluation when a complete application or amended application is received by the department, and not upon mailing.
NEW RULE III  GRANT APPLICATION CONTENTS  
(1) Each application must identify the lead applicant, list each member of the strategic industry partnership, and include the name, mailing address, phone number, and e-mail address for each of the following members:
   (a) one local government;
   (b) one education institution; and
   (c) two or more businesses representing one or more target industries. For each target industry, the application must include the following:
      (i) describe each "high-demand occupation," as defined by 39-11-302, MCA, or the set of occupations within the target industry; and
      (ii) evidence of industry workforce shortages.
(2) Each application shall describe the target population for the program and any specific job readiness assistance needed by the target population.
(3) Programs that are eligible for funding pursuant to these rules are for planning or implementation activities designed to address skill gaps in the target population and/or train workers for specific occupations. Priority will be given to implementation activities. No program shall last more than 12 months. Each application shall include the following about the program:
   (a) identify a program budget, including a cost breakdown of expenses;
   (b) describe the requirements of the program, and how the program relates to the target industry; and
   (c) describe what constitutes successful completion of the program, including any credential earned at completion of the program.
(4) Each application must describe the expected economic benefits to individuals who successfully complete the described program, including expected wages and opportunities for career advancement.
(5) Each application shall identify the amount and sources of any matching funds provided by or on behalf of the strategic industry partnership, including the identity of the persons or entities providing a significant amount of matching funds. Matching funds are not required to submit an application, but matching funds will be considered favorably in evaluation of the application pursuant to [NEW RULE IV].
(6) The applicant is encouraged to provide documentation to support the statements contained in the application.
(7) Grant applications and any supporting documents may be subject to inspection by the public pursuant to Montana's public records laws.

NEW RULE IV  EVALUATION CRITERIA FOR GRANT APPLICATION  
(1) The department shall award funds based on the written grant application and any supporting documentation submitted by the lead applicant as part of the application. The department shall determine an initial application cycle for submission of applications and awarding of grant funds. If more than one
application is submitted during the initial cycle, the applications shall be ranked according to the criteria in (3). If no applications are received during the initial cycle or if funding is still available after the initial cycle, the department will determine a subsequent cycle for submission of applications and awarding of grant funds.

(a) An application may be amended at the department's discretion.
(b) No lead applicant shall be awarded more than one award during a state fiscal year.
(c) A lead applicant who is denied funding during the initial cycle for submission may submit an application in any subsequent cycle.
(d) A lead applicant may withdraw a grant application before the department undertakes its evaluation of the application.

(2) An application is submitted for evaluation once the complete application or amended application is received by the department.

(3) The department shall evaluate submitted applications and award grants, based on the following:
(a) whether the application is complete pursuant to [NEW RULE III];
(b) whether the training reasonably relates to the employer's Montana business operations;
(c) whether the training outcomes for the target population (completion rate and amount of economic improvement) are readily measurable;
(d) whether any matching funds are available for the project, and the amount of matching funds compared to the amount of funds requested in the application;
(e) the significance of the impact of the grant on the target population, and any other considerations the department deems relevant for furthering the purposes of the EARN program.

(4) The department may consider such other matters as may be pertinent to the evaluation, including but not limited to whether the lead applicant has provided timely reporting and compliance with regards to other grants previously awarded by the department.

(5) The department shall notify the lead applicant in writing of the department's decision to approve or reject a grant application following evaluation of the application. The notice approving the application must specify the amount approved for the grant.

AUTH: 39-11-305, MCA
IMP: 39-11-305, MCA

NEW RULE V AWARD OF GRANTS AND PAYMENTS

(1) Grant funding is limited by the appropriations available for the grants.
(2) The maximum available for a lead applicant awarded a grant is $5,000. The department may award a grant for less than the full amount requested. The amount of a grant that is awarded is the maximum payable for the grant.
(3) Grants are funded based upon the evaluation of the applications as provided by [NEW RULE IV].
(4) Upon an award of grant funds, the department shall enter into a fiscal agreement with the successful lead applicant. The funding agreement must address the following:
(a) the terms of the grant;
(b) audit rights of the department and/or state;
(c) intellectual property;
(d) the grant reporting requirements; and
(e) any other matters related to the proper expenditure of public funds.

(5) Upon an award of grant funds, the successful lead applicant must:
(a) sign the financial agreement within 14 calendar days; and
(b) submit a completed state of Montana form SW9 (Substitute W-9) or IRS form W-9.

AUTH: 39-11-305, MCA
IMP: 39-11-305, MCA

NEW RULE VI GRANT REPORTING REQUIREMENTS
(1) The grant award recipient shall submit a first progress report to the department within six months of receipt of the grant award. The progress report shall address the following:
(a) status of the project;
(b) metrics to date;
(c) benefits to the target populations and strategic industry partners; and
(d) any other relevant information.

(2) The grant award recipient shall submit a second progress report to the department within 12 months of receipt of the grant award. The second progress report shall address the factors listed in (1)(a) through(d), and also describe the projects' outcomes and benefits upon completion.

(3) The department may use information contained in the employer reports for any of the following purposes:
(a) to evaluate the effect of the training on individual income, financial independence, and other matters consistent with the purposes of the EARN Program Act;
(b) to provide non-personally identifiable information to the legislative and executive branches regarding program operations and outcomes;
(c) for audit purposes, including review by legislative auditors.

(4) A grant award recipient shall keep and maintain records regarding all transactions for which the recipient received grant funding, including, at a minimum, supporting documentation (e.g., invoices) for each expenditure that verifies an expenditure is allowable under the terms of the grant award.

(5) A grant award recipient shall maintain the records described in (4) for a period of five years following grant expiration. The department may determine a grant award recipient does not comply with these rules if records are not kept and maintained as provided in this rule.

(6) The failure of a lead applicant to timely report matters as required by this rule and the financial agreement may negatively affect the department's evaluation of other grant applications submitted by the lead applicant, as provided by [NEW RULE IV].

AUTH: 39-11-305, MCA
NEW RULE VII REVOCATION OF GRANT AWARDS  
(1) A grant award may be revoked in whole or in part for reasons including, but not limited to, the following:
  (a) failure to follow the terms of the funding agreement;
  (b) failure to follow reporting requirements; or
  (c) failure to fund the program for the target population as described in the grant application.
(2) The revocation of a grant award or partial grant under this subchapter may negatively affect the department's evaluation of other grant applications submitted by the lead applicant, as provided by [NEW RULE IV].

AUTH: 39-11-305, MCA
IMP: 39-11-305, MCA

NEW RULE VIII DISPUTE RESOLUTION  
(1) A lead applicant or grant recipient has the right to appeal when the department:
  (a) decides not to award funding for a grant application;
  (b) awards less grant funding than requested in the application; or
  (c) revokes a grant award or a portion of a grant award.
(2) If a lead applicant disagrees with the department's decision to not approve an application, or to approve less funding than was requested, the lead applicant may either:
  (a) submit a written request for administrative review within 30 calendar days of the date of the notice of the department's decision regarding the application. The request shall be submitted to the Department of Labor and Industry, Montana EARN Program Grants, P.O. Box 1728, Helena MT 59624-1728, or electronically to MontanaEARN@mt.gov; or
  (b) submit a written request for a contested case proceeding, pursuant to the informal procedures provided in 2-4-604, MCA, within 30 calendar days of the date of the notice of final decision of the department. The final decision of the department may be the result of an administrative review requested pursuant to (2)(a). The request shall be submitted to the address in (2)(a).
(3) In any request for review or hearing under this rule:
  (a) the lead applicant has the burden to show that the department abused its discretion in making a determination or otherwise failed to provide a fundamentally fair process in its decision making; and
  (b) the lead applicant bears the burden of proof and the burden of production of evidence.
(4) A party that receives an adverse final decision under this rule may file a petition for judicial review in District Court pursuant to 2-4-702, MCA.

AUTH: 39-11-305, MCA
IMP: 39-11-305, MCA
5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail nburbridge@mt.gov, and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 26, 2020, by phone.

9. Pursuant to 2-4-111, MCA, the department has determined that the rule adoptions proposed in this notice will have a significant and direct impact upon small businesses.

The Montana EARN program is a voluntary program that will not have a significant and direct impact on small businesses that do not qualify or choose not to participate in the program.

The EARN program grants present a positive, significant, and direct impact on small businesses that qualify for the program and choose to participate. A small business within a target industry may join a strategic industry partnership, and the strategic industry partnership may apply for an EARN program grant. The EARN program grant can be used to fund programs to meet the small business's specific workforce needs. A strategic industry partnership that is awarded an EARN program grant is subject to program compliance requirements, including reporting requirements and possible audits. The creation of a strategic industry partnership and the designation of the lead applicant to act as fiscal agent for receipt of grant funds allow a small business to share the responsibility of grant reporting with other
members of the partnership. The reporting requirements and possible audits do not require a small business to engage any specialized services beyond those required for standard business record-keeping and accounting practices.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR          /s/ BRENDA NORDLUND
Quinlan L. O'Connor          Brenda Nordlund, Acting Commissioner
Alternate Rule Reviewer               DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on October 27, 2020.