GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

# Fiscal Note 2027 Biennium

| Bill # | HB 635 | Title: | Revise human rights laws to prohibit diversity, equity, and inclusion programs |
|---|---|---|---|
| Primary Sponsor: | George Nikolakakos | Status: | As Amended in House Committee |

☒Significant Local Gov Impact ☒Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☒Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

## FISCAL SUMMARY

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Expenditures:** | | | | |
| General Fund | $2,204,115 | $2,145,615 | $2,177,800 | $2,210,467 |
| State Special Revenue | $117,953 | $115,153 | $116,880 | $118,633 |
| Federal Special Revenue | $0 | $0 | $0 | $0 |
| Other - Proprietary | Unable to Determine | Unable to Determine | Unable to Determine | Unable to Determine |
| **Revenue:** | | | | |
| General Fund | $0 | $0 | $0 | $0 |
| State Special Revenue | $0 | $0 | $0 | $0 |
| Federal Special Revenue | $0 | $0 | $0 | $0 |
| Other - Proprietary | Unable to Determine | Unable to Determine | Unable to Determine | Unable to Determine |
| **Net Impact-General Fund Balance:** | ($2,204,115) | ($2,145,615) | ($2,177,800) | ($2,210,467) |

**Description of fiscal impact:** HB 635 is an act revising human rights laws, prohibiting state or local government agencies from funding diversity, equity, and inclusion program. There will be a fiscal impact to the Department of Justice and the Department of Labor and Industry to implement the requirements of this proposed legislation. The impacts to other agencies, however, including the Montana University System, cannot be determined.

## FISCAL ANALYSIS

**Assumptions:**

**Commissioner of Higher Education**

1. The Montana University System (MUS) currently offers 11,500 undergraduate college courses and more than 1,350 degree or certificate programs.
2. The MUS has $427M in research expenditures.

3. It is assumed this bill may require all MUS courses and programs of study, including graduate level courses and research, and federal compliance obligations to be assessed.
4. The requirement will include additional courses and programs of study offered at the community colleges and tribal colleges.
5. The costs to conduct this level of research and analysis cannot be determined.

**Department of Justice**

6. The Department of Justice (DOJ) cannot reasonably determine costs associated with HB 635, as drafted, because it is not known how enforcement of HB 635 will interact with the existing Montana Human Rights Act. For reference, the Department of Labor and Industry's Human Rights Bureau (HRB) retains 14.96 FTE. From July 2023 to July 2024, the HRB received 451 complaints, of which 109 of these complaints concerned state or local government. Additionally, 202 of these complaints related to sex, race, color, religion, or national origin. It is unclear how many of the complaints concerned covered entities and covered conduct under HB 635.
7. It is assumed that an indeterminant number of FTE and associated funding will be required for investigation and enforcement activities. If comparable resources were needed within the DOJ, as are needed within the HRB, then up to 15 FTE and associated funding could be needed to implement HB 635. It is unclear how many FTE will ultimately be necessary for implementation.
   - Personal Services: 15.00 investigators at $89,256 per FTE per year.
   - Operating: $57,685 in FY 2026 and $53,785 in FY 2027 for travel costs, based on 15 travel days per month and including meals, lodging, and motor pool fees.
   - An inflationary increase of 1.5% has been added to this amount FY 2028 and FY 2029.

**Department of Labor and Industry**

8. Each of the Human Rights Bureau (HRB) investigators typically handle 48-60 investigations per year (4 to 5 a month, with a total of approximately 400-450 complaint filings each year). There are 56 counties in Montana and approximately 127 municipalities. It can be assumed that all of these agencies have, and will continue to have, various programs and policies that may be implicated by the passing of SB 635.
9. Every state and local entity currently has some form of training and/or policies that may, or may not, be implicated by New Section 1. Definition (2) provision precluding "divisive concepts." Given that current codification allows for dual filing with DLI, it is assumed that the HRB will receive complaints under that provision for investigation. Further, given the number of state and local entities in Montana, the department will require 1.00 FTE to handle and process these complaints.
10. Starting July 1, 2025, DLI will need to hire 1.00 FTE Investigator at an annual salary and benefits amount of $88,921.44 in FY 2026 and FY 2027. This amount has been inflated by 1.5% for FY 2028 and FY 2029.
11. The department estimates that operating costs, such as telephone, copiers, scanners, utilities, minor equipment, supplies, technology costs, rent and indirect costs will total $26,232 in FY 2026 and FY 2027. This amount has been inflated by 1.5% for FY 2028 and FY 2029. One-time-only operating expenditures for the new FTE include $1,600 for office supplies and equipment and $1,200 for a computer. These costs are included in FY 2026.
12. If HB 2 and HB 656 are not both passed and approved, then appropriations to the Employment Standards Division of the Department of Labor and Industry in HB 2 are to change as follows: General Fund appropriations to increase $117,953 in FY 2026 and increase $115,153 in FY 2027, State Special Revenue appropriations to decrease $117,953 in FY 2026 and decrease $115,153 in FY 2027.

**Judicial Branch**

13. Section 3 of HB 635 allows the Attorney General the authority to investigate and prosecute alleged violations of this act.
14. Section 3, (5) allows the Attorney General to apply to the district court for a hearing to request an order granting injunctive relief to restrain the person from engaging in any conduct specified in this act.

15. The Judicial Branch cannot determine the fiscal impact of HB 635, as it is difficult to determine how many additional court hearings it would require.

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact: Department of Justice** | | | | |
| **FTE** | 15.00 | 15.00 | 15.00 | 15.00 |
| **Expenditures:** | | | | |
| Personal Services | $1,338,840 | $1,338,840 | $1,358,923 | $1,379,307 |
| Operating Expenses | $865,275 | $806,775 | $818,877 | $831,160 |
| **TOTAL Expenditures** | $2,204,115 | $2,145,615 | $2,177,800 | $2,210,467 |
| **Funding of Expenditures:** | | | | |
| General Fund (01) | $2,204,115 | $2,145,615 | $2,177,800 | $2,210,467 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Funding of Exp.** | $2,204,115 | $2,145,615 | $2,177,800 | $2,210,467 |
| **Revenues:** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Revenues** | $0 | $0 | $0 | $0 |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures):** | | | | |
| General Fund (01) | ($2,204,115) | ($2,145,615) | ($2,177,800) | ($2,210,467) |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |

**Fiscal Note Request** – As Amended in House Committee *(continued)*

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact: Department of Labor and Industry** | | | | |
| **FTE** | 1.00 | 1.00 | 1.00 | 1.00 |
| **Expenditures:** | | | | |
| Personal Services | $88,921 | $88,921 | $90,255 | $91,609 |
| Operating Expenses | $29,032 | $26,232 | $26,625 | $27,024 |
| **TOTAL Expenditures** | $117,953 | $115,153 | $116,880 | $118,633 |
| **Funding of Expenditures:** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $117,953 | $115,153 | $116,880 | $118,633 |
| **TOTAL Funding of Exp.** | $117,953 | $115,153 | $116,880 | $118,633 |
| **Revenues:** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Revenues** | $0 | $0 | $0 | $0 |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures):** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |

| | FY 2026 Difference | FY 2027 Difference | FY 2028 Difference | FY 2029 Difference |
|---|---|---|---|---|
| **Fiscal Impact: Combined** | | | | |
| **FTE** | 16.00 | 16.00 | 16.00 | 16.00 |
| **Expenditures:** | | | | |
| Personal Services | $1,427,761 | $1,427,761 | $1,449,178 | $1,470,916 |
| Operating Expenses | $894,307 | $833,007 | $845,502 | $858,184 |
| **TOTAL Expenditures** | $2,322,068 | $2,260,768 | $2,294,680 | $2,329,100 |
| **Funding of Expenditures:** | | | | |
| General Fund (01) | $2,204,115 | $2,145,615 | $2,177,800 | $2,210,467 |
| State Special Revenue (02) | $117,953 | $115,153 | $116,880 | $118,633 |
| **TOTAL Funding of Exp.** | $2,322,068 | $2,260,768 | $2,294,680 | $2,329,100 |
| **Revenues:** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Revenues** | $0 | $0 | $0 | $0 |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures):** | | | | |
| General Fund (01) | ($2,204,115) | ($2,145,615) | ($2,177,800) | ($2,210,467) |
| State Special Revenue (02) | ($117,953) | ($115,153) | ($116,880) | ($118,633) |

**Effect on County or Other Local Revenues or Expenditures**

1. Mont. Code Ann. 49-2-512 states that the process for discrimination complaints within the Department of Labor & Industry "establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter." This bill conflicts with that exclusive remedy provision in at least three ways. First, as recognized in Section 2(4), the bill expressly states that provisions of the bill may be pursued concurrently or separately from the Human Rights Act, though not through the Department of Labor & Industry. Second, at Section 3, the bill establishes concurrent and duplicative enforcement authority by the Attorney General. Third, at Section 4, the bill establishes concurrent and duplicative enforcement in a private right of action by an individual. As such, the bill creates a statutory conflict of law and establishes potentially triplicate, concurrent, overlapping enforcement regarding identical fact situations.
2. Section 1(2) defines "divisive concepts" to include but not be limited to the four provisions listed. While certain categories are listed in statute, a plain reading and understanding of the term "divisive" would allow any issue which might not have consensus to lead to a claim under the Human Rights Act, as well as enforcement by private right of action or the Attorney General.
3. Section 1 raises concerns under the First Amendment to the United States Constitution. The concern arises because, while programs or initiatives may generally be funded, the Section bars such programs or initiatives if they are, or might be, "divisive." This raises questions as to viewpoint discrimination. "To exclude a group simply because it is controversial or divisive is viewpoint discrimination. A group is controversial or divisive

because some take issue with its viewpoint." *Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp Sch. Dist.,* 386 F.3d 514 (3d Cir. 2004).

4. Section 2(4) provides that the bill may overlap with Title 49, chapter 2, and that the bill should be construed to bar filings under Title 49, chapter 2. The Governmental Code of Fair Practices, applicable to government entities, is codified at Title 49, chapter 3. By including solely chapter 2 and not chapter 3, it is implied that claims under the Government Code may be barred by this act.
5. Section 3(1) states that the Attorney General may "prosecute" violations of the bill. The bill does not establish criminal penalties. As such, there is no basis established for "prosecution" by any entity.
6. Section 3(3) permits the Attorney General to issue a subpoena. No provision for objection or protection from the subpoena is provided. Subsection (5) provides that the Attorney General may apply for enforcement of the subpoena to the district court. Without contemplation for whether there was a permissible reason for objection or nonresponse to the subpoena (see Mont. Code Ann. 2-4-104; Mont. R. Civ. P. 45) the subsection allows injunctive relief, a $10,000 fine, and "other relief." In addition, the subsection provides that, by failing to respond to a subpoena, the court may enjoin violations of other parts of the bill, without providing for due process or other procedural protections relating to those other provisions.

**Significant Long-Term Impacts**

1. The fiscal implications of HB 635 are difficulty to quantify, however, the Montana University System (MUS) expects they will be significant and ongoing.
2. It is also not possible to determine a cost, due to the technical concerns identified below.
3. The broad language of the bill referencing "programs" and "initiatives" implemented by a university unit or college will encompass courses and programs of study offered, research conducted, federal compliance obligations, and curriculum delivered by the MUS.
4. The broad language of the proposed legislation requires that all "programs and initiatives" may be investigated and prosecuted by the Attorney General.
5. The total cost impact to the MUS is indeterminable at this time as the total number of programs or initiatives cannot be ascertained without a full assessment across the MUS.

**Technical Concerns**

1. The definition of DEI is broad, the term divisive concept could potentially encompass a teacher sharing public opinion polls based on race or sex, teaching the history of the women's rights movement, the adoption of Title IX or the Civil Rights Act.
2. Creating a separate oversight and investigatory process within the Attorney General's office to review MUS policy and/or course material would likely violate the constitutional authority vested with the Board of Regents.

NOT SIGNED BY SPONSOR

*Sponsor's Initials* *Date* *Budget Director's Initials* 3-23-25 *Date*