EXHIBIT 1
DATE 1-5-07
HB 72

TESTIMONY IN FAVOR OF HB 72
Before the House Business and Labor Committee
Jerry Keck, Administrator
Employment Relations Division
Department of Labor and Industry
January 5, 2007

Mr. Chairman, members of the committee, for your record my name is Jerry Keck. I am the administrator of the Employment Relations Division in the Department of Labor and Industry. It is my pleasure to appear before you as a proponent on the first bill being heard by this committee this session. The Department thanks Rep. Van Dyk for sponsoring HB 72.

The Employment Relations Division is charged with implementing a number of the state statutes that affect the employer – employee relationship. One broad area where we have regulatory responsibility is workers' compensation. It is because of the connection to workers' compensation that implementation of the Professional Employers' Organizations and Group Licensing Act is located in this Division.

Professional Employer Organizations (known as PEOs) provide employees to companies who do not want to have the responsibility of hiring employees. Small companies who do not have expertise in payroll functions, tax reporting functions, legal support, or dealing with workers' compensation claims lease their workers from the PEO. The PEO takes care of all of the human resource functions.

We currently have 36 licensed PEOs in Montana who provide workers to approximately 380 companies. The 36 PEOs employ 3,000 Montanans all across the state.

HB 72 addresses two issues:

First, it clarifies the Department's authority to obtain criminal justice information to determine whether a controlling person is of good moral character and financially responsible. The current statute requires the Department to gather information to show that "each controlling person 'is' of good moral character, 'has' business integrity, and 'is' financially responsible". Since the initial enactment of the statute in 1995, the Department has required a fingerprint check as part of our verification of moral character, business integrity and financial responsibility.

Since 9/11 and the new focus of Homeland Security, it is more difficult for us to obtain the fingerprint check information from the FBI without the statutory designation that we are a criminal justice agency. New Section 1 designates the department as a criminal justice agency in order to obtain that information. Section 2 clarifies in statute what has been our practice since 1995.

Section 3 is simply a language cleanup recommended by the Legislative Council drafter as a duplication of language already contained in section 39-8-202(9)(a).

The second substantive change is in section 4. The statute requires that every PEO submit to the Department on a quarterly basis information certified by an independent CPA demonstrating that all payroll-related taxes for that quarter have been paid. The changes proposed in section 4 would allow the Department to waive that requirement for PEOs who are members of a qualified assurance organization approved by the Department.

The PEO industry nationwide recognizes the importance of self policing to insure that a few bad actors do not tarnish the reputation of the industry. To that end, the industry has created a national assurance organization that sets very high standards for acceptance into the group. Once accepted, the assurance organization essentially vouches for the financial stability and compliance with state taxing and regulatory requirements. In order to provide this guarantee, the assurance organization requires that each approved member PEO submit quarterly audited financial statements. Rather than duplicating this requirement, section 4 would allow the Department to waive the requirement that the PEO also provide independent certified financial statements to the Department. We would have access to the information provided to the assurance organization to meet our requirement for verification that all payroll related taxes have been paid.

We only have 4 or 5 PEOs in Montana who are members of the national assurance organization. These PEOs invest a substantial amount of time and money to meet the requirements of the assurance organization. The changes in section 4 would provide some financial relief to those PEOs because they would not be required to also provide that same information to the Department.

Mr. Chairman, members of the committee, the Department believes that this is a positive bill to improve the regulatory framework for the PEO industry. It provides a reasonable balance of authority to protect businesses in this state from unscrupulous or fraudulent PEOs while providing appropriate regulatory relief to those PEOs who have demonstrated the commitment to operate with integrity and financial responsibility. I urge your support for HB 72.

Mr. Chairman, I will try to answer any questions that the committee may have. Thank you.