



# The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA  
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## **MBO BUDGET WOES; FEE INCREASE LIKELY**

### *Board Cuts Expenses, But Department Costs Keep Rising*

The Board of Outfitters members took a hard look at rising expenses at their last meeting on December 7, made recommendations to explore cutting board costs, but a licensee fee increase seems likely before the end of 2011.

Members may recall that the previous MBO Executive Director underestimated budget income and expense projections when our last fee increase was discussed, so the fee increase was not enough to offset expenses and left the board in the red at the end of 2009.

MBO board members and staff reviewed the current two-year budget ending in June of 2011 and decided to cut board expenses in two areas:

1) Reduce payment to the Dept. of Fish, Wildlife & Parks for investigation of unlicensed practice. FWP has in place a law allowing them to investigate unlicensed outfitting separately from the MBO, which has no such statutory authority. Board members figured continued payment to FWP wardens for license checks was enough to discourage unlicensed practice without the expense of prosecution already covered by the new FWP law. Board counsel will negotiate with FWP on this cost reduction request.

2) Shrink MBO expenses either by reducing staff, cutting hours, or revamping processes to increase efficiency.

Unfortunately, any savings in these areas will only bring overall expenses on a par with revenue; it will not provide any banked revenue cushion against increased future or unexpected expenses. In the last FOAMLINE, we discussed increased expenses for information technology, both within the board bureau and from the statewide Information and Technology Service Division (ITSD) of state government. Add in an approximate \$9K fee for the board's upgraded database that includes online licensing, along with incremental salary and benefit increases for personnel within the Dept. of Labor & Industry administrating board functions, and the board budget is running a deficit.

Ironically, FOAM called for an expense-reviewing board budget committee back in 2000, but now with little money to spare, the board cannot afford the mandatory meeting and public notice expenses of forming such a cost-monitoring subcommittee! No matter, because FOAM representative Robin Cunningham and board member Lee Kinsey will track the expense-cutting proposals outlined above and push for more savings where possible without any subcommittee.

So, be prepared for fee discussions throughout 2011 and possible outfitter and guide license fee increases in the range of \$50-\$100 before renewal in the fall of 2011.

## **COST RECOVERY BILL PROPOSED BY DLI**

### *MBO Could Bar Unlicensed Practice, Regain Costs*

The Department of Labor & Industry (DLI), home for the Board of Outfitters and other licensing boards, developed proposed legislation authorizing boards to stop unlicensed practice and recoup administrative and legal review costs up to \$10K.

The bill would enable the MBO (and other licensing boards like Plumbers, Electricians, Architects, etc.) to issue a cease and desist order to individuals "engaged in an act or practice constituting unlicensed practice or a profession", levy a civil penalty up to \$1500 per violation up to \$5000 for all violations, and order the individual to pay up to \$5000 for the costs of administrative proceedings, investigation, and attorney fees.

You may remember that in 2007, Sen. Larry Jent successfully passed Senate Bill 100 enabling FWP prosecution of unlicensed outfitting as a felony coupled with fines of up to \$10K. The current DLI proposal compliments that law by allowing the MBO to bar unlicensed practice and recover administrative and legal costs on their own.

## **FOAM PROPOSES SIMPLE CONTRACT BILL**

### *Bill Would Add "Contract For" to MBO Equipment Statutes*

Board of Outfitter laws state an outfitter must "own or hold under written lease" all equipment used in their profession. FOAM has submitted a bill proposal to add the term "contract for" to that sentence so outfitters could contract for the equipment from a guide with independent contractor status or some other entity, like a boat rental agent.

Why? Three reasons:

- 1) An independent contractor supplying his/her own equipment is common and establishes them as an independent business,
- 2) In our industry, it has become a standard for I.C. fishing guides providing their own equipment when working for an outfitter,
- 3) Contracting with either an I.C. guide or a rental agent would allow one-day or day-to-day equipment use without complicated lease agreements.

It is unreasonable for an outfitter to buy or lease in advance boats, trailers, oars, etc. on the off chance they might need to provide services for a large group of clients. FOAM thinks this small law change would fit with modern business practices such as "on-time, as-needed" inventory instead of a huge backlog of stock. Plus, such a law would enable hunting outfitters to access additional equipment, too.

It's arguable the phrase "hold under written lease" may include the use of equipment by a guide under a contract with an outfitter - indeed, current MBO counsel agrees with this interpreta-

tion, so long as a contract states the conditions of use, defines equipment to match MBO statutes, and notes that any equipment is subject to MBO inspection.

However, given the variable history of legal interpretations rendered by a series of board counsels in the past, FOAM thought it best to place this particular concept in law rather than rely on individual counsel opinions in the future.

What would successful passage of the bill mean in the field? Since current laws require an outfitter to use a written contract when using an I.C. guide and FOAM has offered a draft contract online at our website for years, we would add suitable language to that generic draft, such as:

1) enabling the temporary, one-day or day-by-day contracting of the guide's equipment or that of a rental agent by the contracting outfitter,

2) defining the equipment "as necessary for the provision of guide services" such as boat, raft, tackle, etc., and

3) ensuring public health, safety and welfare by noting that any such equipment is subject to MBO inspection.

FOAM will request a legal review of these terms by a contract attorney should the legislation pass into law.

Listed as LC0767 in the Montana LAWS system, the bill will be introduced in the Senate by Sen. Larry Jent (D, Bozeman). When the time is ripe, your comments and letters to your legislators will help pass the bill out of committee, through the Senate and on to the House of Representatives.

FOAM will keep you informed about this and other legislative proposals' progress throughout the 2011 Session via email alerts and our March newsletter.

## MBO ACCEPTS ONLINE FIRST AID COURSE

*ProFirstAid.com Blended Learning F.A. Certification OK*

During their December meeting, the MBO reviewed and accepted an online course provided by ProFirstAid.com as adequate to fulfill the first aid requirement for outfitter and guide relicensing. It will NOT fulfill the requirement for a first-time license; a hands-on course is required for first-time licensees.

Board member Lee Kinsey took the online course, noting it took about an hour-and-a-half to complete, including review of online materials and the test itself.

The course consists of both first aid and CPR, though completion of a first aid course alone is required by MBO rule. Cost:\$39.95 if you successfully complete the multiple-choice online test. You will receive a downloadable 2-year certificate and can get one mailed at no extra cost.

The board also approved all Armed Forces first aid training courses to fulfill the requirement for both first-time licensing and relicensing.

Finally, in the Bozeman area, you may contact Inter-Mountain Medical Educators at 587-7918 for hands-on training. In future FOAMLINES, we'll put together a list of F.A. course providers for major Montana cities, too.

- MBO Accepts Online First Aid Course
- FOAM Proposed Contract Legislation
- Cost Recovery Legislation Proposed
- MBO Budget Discussion; Fee Change Possible

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