

SENATE BILL NO. 388

In the Senate

February 6, 1979	Introduced and referred to Committee on State Administration.
February 7, 1979	Fiscal note requested.
February 14, 1979	Fiscal note returned.
February 19, 1979	Committee recommend bill do do not pass.

1 *State* BILL NO. *388*
 2 INTRODUCED BY *David Lockrem Ferguson Thunen*
 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 6 REGULATION OF THE PRACTICE OF PROFESSIONAL ENGINEERING AND
 7 LAND SURVEYING BY A BOARD OF PROFESSIONAL SERVICE REGULATION
 8 IN THE DEPARTMENT OF BUSINESS REGULATION; TERMINATING THE
 9 OPERATION OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND
 10 SURVEYORS ON JULY 1, 1979; ELIMINATING REFERENCES TO THE
 11 BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS;
 12 REDEFINING THE TERM PRACTICE OF LAND SURVEYING; CLARIFYING
 13 THE MEANING OF PRACTICE; GRANTING RULEMAKING AUTHORITY;
 14 IMPOSING CERTAIN DUTIES ON THE DEPARTMENT; PERMITTING THE
 15 BOARD TO SET FEES; AMENDING SECTIONS 2-8-121, 37-67-101,
 16 37-67-102, 37-67-303, 37-67-315, 37-67-317, 37-67-318, AND
 17 70-22-103, MCA; AND REPEALING SECTIONS 2-15-1653 AND
 18 37-67-201 THROUGH 37-67-203, MCA."

19
 20 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
 21 will terminate the board of professional engineers and land
 22 surveyors and require a performance evaluation of the board
 23 by the legislative audit committee; and

24 WHEREAS, as a result of the performance evaluation, the
 25 legislative audit committee recommends that the board of

1 professional engineers and land surveyors be abolished and
 2 regulation of the practice of engineering and the practice
 3 of land surveying be transferred to the board of
 4 professional service regulation in the department of
 5 business regulation and that certain statutory provisions be
 6 amended or repealed.
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 2-8-121, MCA, is amended to read:
 10 "2-8-121. Effect of termination. ~~Upon~~ Unless otherwise
 11 provided, upon termination, each agency or unit shall
 12 continue in existence until July 1 of the next succeeding
 13 year for the purpose of winding up its affairs. During the
 14 windup period, termination does not reduce or otherwise
 15 limit the powers or authority of each respective agency
 16 except that no action may be taken which would continue in
 17 effect beyond the 1-year windup period. Upon the expiration
 18 of the 1 year after termination, each agency not modified or
 19 reestablished shall be abolished and all unexpended balances
 20 of appropriations, allocations, or other funds shall revert
 21 to the fund from which they were appropriated or, if that
 22 fund is abolished, to the general fund."

23 Section 2. Section 37-67-101, MCA, is amended to read:

24 "37-67-101. Definitions. As used in this chapter, the
 25 following definitions apply:

1 (1) "Board" means the board of professional engineers
2 ~~and land surveyors~~ service regulation provided for in
3 [section 2 of Senate Bill 247].

4 (2) "Department" means the department of profession~~t~~
5 ~~and occupational licensing~~ business regulation provided for
6 in Title 2, chapter 15, part 18.

7 (3) "Engineer-in-training" means a person who complies
8 with the requirements for education, experience, and
9 character and has passed an examination in the fundamental
10 engineering subjects, as provided in this chapter.

11 (4) "Land surveyor" means a person who has been duly
12 registered and licensed as a land surveyor by the board and
13 is a professional specialist in the technique of measuring
14 land, educated in the basic principles of mathematics,
15 related physical and applied sciences, and relevant
16 requirements of law for adequate evidence and all requisites
17 to the surveying of real property and is engaged in the
18 practice of land surveying as herein defined.

19 (5) "Land surveyor-in-training" means a person who has
20 qualified for, taken, and passed an examination on the basic
21 disciplines of land surveying as provided in this chapter.

22 (6) "Practice of engineering" means any service or
23 creative work the adequate performance of which requires
24 engineering education, training, and experience in the
25 application of special knowledge of the mathematical,

1 physical, and engineering sciences to such services or
2 creative work as consultation, investigation, evaluation,
3 planning and design of engineering works and systems,
4 planning the use of water, teaching of advanced engineering
5 subjects, engineering surveys, and the inspection of
6 construction for the purpose of assuring compliance with
7 drawings and specifications; any of which embraces such
8 services or work, either public or private, in connection
9 with any utilities, structures, buildings, machines,
10 equipment, processes, work systems, projects, and industrial
11 or consumer products or equipment of mechanical, electrical,
12 hydraulic, pneumatic, or thermal nature insofar as they
13 involve safeguarding life, health, or property and including
14 such other professional services as may be necessary to the
15 planning, progress, and completion of any engineering
16 services. The term does not include the work ordinarily
17 performed by persons who operate or maintain machinery or
18 equipment, communication lines, signal circuits, electric
19 powerlines, or pipelines.

20 (7) "Practice of land surveying" means any service or
21 work, the adequate performance of which requires the
22 application of knowledge of the principles of mathematics,
23 physical sciences, applied sciences, and:

24 (a) the principles of property boundary law to the
25 recovery and preservation of evidence pertaining to earlier

1 land surveys;

2 (b) teaching of advanced land surveying subjects;

3 (c) measurement and allocation of lines, angles, and
4 elevations;

5 (d) location of natural and manmade features in the
6 air, on the surface of the earth, within underground
7 workings, and on the beds of bodies of water, including such
8 work for the determination of areas and volumes;

9 (e) monumenting of property boundaries;

10 (f) platting and layout of lands and the subdivisions
11 thereof, including the alignment and grades of streets and
12 roads therein; and

13 (g) preparation and perpetuation of maps, plats, field
14 note records, and property descriptions.

15 (3) "Professional engineer" means a person who, by
16 reason of his special knowledge and use of the mathematical,
17 physical, and engineering sciences and the principles and
18 methods of engineering analysis and design acquired by
19 engineering education and engineering experience, is
20 qualified to practice engineering and who has been duly
21 registered and licensed as a professional engineer by the
22 board.

23 (9) "Responsible charge" means direct control and
24 personal supervision either of engineering work or of land
25 surveying, as the case may be. Only professional engineers

1 or land surveyors may legally assume responsible charge
2 under this chapter."

3 Section 3. Section 37-67-102, MCA, is amended to read:
4 "37-67-102. Representation as practitioner to be
5 construed as practice. (1) A person shall be construed to
6 practice or offer to practice engineering, within the
7 meaning and intent of this chapter, who practices any branch
8 of the profession of engineering or who by verbal claim,
9 sign, advertisement, letterhead, card, or in any other way
10 represents himself to be a professional engineer or through
11 the use of some other title implies that he is a
12 professional engineer or that he is registered under this
13 chapter or who holds himself out as able to perform or who
14 does perform any engineering service or work or any other
15 service designated by the practitioner which is recognized
16 as engineering or who teaches advanced engineering subjects.

17 (2) Any person shall be construed to practice or offer
18 to practice land surveying, within the meaning and intent of
19 this chapter, who engages in land surveying or who by verbal
20 claim, sign, letterhead, card, or in any other way
21 represents himself to be a land surveyor or through the use
22 of some other title implies that he is a land surveyor or
23 who represents himself as able to perform or who does
24 perform any land surveying service or work or any other
25 service designated by the practitioner which is recognized

1 as land surveying or who teaches advanced land surveying
2 subjects."

3 NEW SECTION. Section 4. Rulemaking power. The board
4 may adopt rules necessary to protect the public health,
5 safety, and welfare in regulating the practice of
6 engineering and the practice of land surveying.

7 NEW SECTION. Section 5. Duties of the department. The
8 department shall:

9 (1) assist the board in transaction of its business
10 and keep a record of the board's official action; and

11 (2) charge the board for the reasonable costs of the
12 department incurred in assisting the board.

13 Section 6. Section 37-67-303, MCA, is amended to read:

14 "37-67-303. Application -- contents -- fees. (1)
15 Applications for registration shall be on forms prescribed
16 by the board and furnished by the department, shall contain
17 statements made under oath showing the applicant's education
18 and a detailed summary of his technical work, and shall
19 contain not less than five references, of whom three or more
20 shall be engineers or land surveyors having personal
21 knowledge of his engineering or land surveying experience.

22 (2) ~~The fee for engineer in training is \$29, which~~
23 ~~shall accompany the application and shall include the cost~~
24 ~~of one examination. No additional fee is required for~~
25 ~~issuance of a certificate.~~ The board may establish such

1 application and renewal fees as are required for the proper
2 administration of the regulation of the practice of
3 engineering and land surveying but which must be reasonably
4 related to carrying out the respective aspects of the
5 regulatory program. All application and renewal fees must
6 accompany the application and renewal forms.

7 ~~{3} The application fee for registration as a~~
8 ~~professional engineer is \$20 for those holding an~~
9 ~~engineer-in-training certificate validated for Montana. For~~
10 ~~those holding a valid engineer-in-training certificate from~~
11 ~~some other state, the application fee is \$30, which includes~~
12 ~~cost of transfer of engineer-in-training certification and~~
13 ~~one examination. Upon approval of application for~~
14 ~~registration as a professional engineer, an additional fee~~
15 ~~equal to the existing yearly renewal fee must be paid before~~
16 ~~issuance of a certificate as a professional engineer.~~

17 ~~{4}~~ (3) The department, subject to approval by the
18 board, may, on application and payment of a fee of \$40,
19 issue a certificate of registration as a professional
20 engineer to a person who holds a certificate of
21 qualification or registration issued to him by the committee
22 on national engineering certification of the national
23 council of engineering examiners or by a state, territory,
24 or possession of the United States or by another country if
25 the applicant's qualifications meet the requirements of this

1 chapter and the rules of the board.

2 ~~{5}--The--fee--for--land--surveyor--in--training--is--\$20,~~
 3 ~~which--shall--accompany--the--application--and--shall--include--the~~
 4 ~~cost--of--one--examination. No--additional--fee--is--required--for~~
 5 ~~issuance--of--a--certificate.~~

6 ~~{6}--The--application--fee--for--registration--as--a--land~~
 7 ~~surveyor--is--\$20--for--those--holding--a--land~~
 8 ~~surveyor--in--training--certificate--validated--in--Montana. For~~
 9 ~~those--holding--a--valid--land--surveyor--in--training--certificate~~
 10 ~~from--some--other--state, the--application--fee--is--\$30, which~~
 11 ~~includes--cost--of--transfer--of--the--certifications. No~~
 12 ~~additional--fee--is--required--for--issuance--of--a--certificate.~~
 13 ~~Upon--approval--of--application--for--registration--as--a--land~~
 14 ~~surveyor, an--additional--fee--equal--to--the--existing--yearly~~
 15 ~~renewal--fee--must--be--paid--before--issuance--of--a--certificate--as~~
 16 ~~a--land--surveyor.~~

17 ~~{7}--The--application--fee--for--registration--as--both--a~~
 18 ~~professional--engineer--and--land--surveyor--is--\$40--for--those~~
 19 ~~holding--engineer--in--training--and--land--surveyor--in--training~~
 20 ~~certificates--validated--in--Montana. For--those--holding--valid~~
 21 ~~engineer--in--training--and--land--surveyor--in--training~~
 22 ~~certificates--from--another--state, the--application--fee--is--\$60.~~
 23 ~~The--fee--shall--accompany--the--applications. Upon--approval--of~~
 24 ~~application--for--registration--as--a--professional--engineer--and~~
 25 ~~land--surveyor, an--additional--fee--equal--to--the--existing~~

1 ~~yearly--renewal--fee--must--be--paid--before--issuance--of--a~~
 2 ~~certificate.~~

3 ~~{8}[4] If the board denies issuance of a certificate~~
 4 ~~of registration to any applicant, the initial fee deposited~~
 5 ~~shall be retained as an application fee."~~

6 Section 7. Section 37-67-315, MCA, is amended to read:
 7 "37-67-315. Annual renewal -- fee. Certificates of
 8 registration expire on December 31 and become invalid on
 9 that date unless renewed. The department shall notify every
 10 person registered under this chapter of the date of the
 11 expiration of his certificate and the amount of the fee
 12 required for its renewal for 1 year. This notice shall be
 13 mailed at least 1 month in advance of the date of the
 14 expiration of the certificate. Renewal may be made during
 15 the month of December by the payment of a fee, not to exceed
 16 \$20, as set by the board for either a professional engineer
 17 or land surveyor, or both. Failure on the part of a
 18 registrant to renew his certificate annually in the month of
 19 December does not deprive him of the right of renewal;
 20 however, a registrant who fails to pay the renewal fee for 2
 21 consecutive years shall be considered a new applicant and is
 22 required to submit a new application."

23 Section 8. Section 37-67-317, MCA, is amended to read:
 24 "37-67-317. Deposit of moneys collected. The
 25 department shall collect all moneys under this chapter and

1 shall deposit these moneys in the earmarked revenue fund for
2 the use of the board, ~~subject to 37-1-101(6).~~"

3 Section 9. Section 37-67-318, MCA, is amended to read:

4 "37-67-318. Roster of licensees to be published by
5 department. A roster showing the names and addresses of
6 registered professional engineers and registered land
7 surveyors shall be published by the department during ~~the~~
8 ~~month of April each year when directed by the board.~~ Copies
9 of this roster shall be mailed to each person registered.
10 Copies shall also be placed on file with the secretary of
11 state, the clerk of each incorporated city and town, and in
12 the office of each county clerk and recorder within the
13 state and furnished to the public on request at a fee
14 established by the board."

15 Section 10. Section 70-22-103, MCA, is amended to
16 read:

17 "70-22-103. Definitions. Except where the context
18 indicates a different meaning, terms used in this part shall
19 be defined as follows:

20 (1) A "property corner" is a geographic point on the
21 surface of the earth and is on, a part of, and controls a
22 property line.

23 (2) A "property controlling corner" for a property is
24 a public land survey corner or any property corner which
25 does not lie on a property line of the property in question

1 but which controls the location of one or more of the
2 property corners of the property in question.

3 (3) A "public land survey corner" is any corner
4 actually established and monumented in an original survey or
5 resurvey used as a basis of legal description for issuing a
6 patent for the land to a private person from the United
7 States government.

8 (4) A "corner", unless otherwise qualified, means a
9 property corner or a property controlling corner or a public
10 land survey corner or any combination of these.

11 (5) An "accessory to a corner" is any exclusively
12 identifiable physical object whose spatial relationship to
13 the corner is recorded. Accessories may be bearing trees,
14 bearing objects, monuments, reference monuments, line trees,
15 pits, mounds, charcoal-filled bottles, steel or wooden
16 stakes, or other objects.

17 (6) A "monument" is an accessory that is presumed to
18 occupy the exact position of a corner.

19 (7) A "reference monument" is a special monument that
20 does not occupy the same geographical position as the corner
21 itself but whose spatial relationship to the corner is
22 recorded and which serves to witness the corner.

23 (8) A "registered surveyor" is a surveyor who is
24 registered to practice land surveying under Title 37,
25 chapter 67, and has a paid-up license for that calendar year

1 or who is authorized under Title 37, chapter 67, to practice
2 land surveying.

3 (9) The "board" is the board of professional engineers
4 ~~and land surveyors, provided for in 2-15-1653~~ service
5 regulation provided for in [section 2 of Senate Bill 247]."

6 Section 11. Transfer of funds. All unexpended balances
7 of appropriations, allocations, or other funds of the board
8 of professional engineers and land surveyors shall be
9 transferred to the board of professional service regulation
10 on the effective date of this act to be used for the purpose
11 of regulating the practice of professional engineering and
12 land surveying.

13 Section 12. Transition. All orders and rules relating
14 to the practice of professional engineering and land
15 surveying made by the board of professional engineers and
16 land surveyors remain in full force and effect until revoked
17 or modified in accordance with law by the board of
18 professional service regulation. The records and documents
19 of the board of professional engineers and land surveyors
20 are transferred to the board of professional service
21 regulation. Licenses, permits, and certificates issued prior
22 to July 1, 1979, are valid under the same terms and
23 conditions as when issued and are subject to the provisions
24 of Title 37, chapter 67.

25 Section 13. Effect of termination. The provisions of

1 2-8-121 do not apply to the board of professional engineers
2 and land surveyors.

3 Section 14. Codification. Sections 4 and 5 are
4 intended to be codified as an integral part of Title 37,
5 chapter 67, and the provisions of Title 37, chapter 67,
6 apply to sections 4 and 5.

7 Section 15. Repealer. Sections 2-15-1653 and 37-67-201
8 through 37-67-203, MCA, are repealed.

-End-

STATE OF MONTANA

Request No. 264-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 1979, there is hereby submitted a Fiscal Note for Senate Bill 388 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

An act providing for the regulation of the practice of Professional Engineering and Land Surveying by a Board of Professional Service Regulation in the Department of Business Regulation.

ASSUMPTIONS:

1. The duties of the Board of Professional Engineers and Land Surveyors will be assumed by a Board of Professional Service Regulation July 1, 1979.
2. 1.50 FTE will be required to administer this act.

FISCAL IMPACT:

	<u>FY 80</u>	<u>FY 81</u>
Anticipated revenue	\$56,380	\$59,844
Anticipated expenditures	<u>56,380</u>	<u>59,844</u>
Net fiscal impact	<u>0</u>	<u>0</u>

Revenue and expenditures will accrue to an earmarked revenue fund account.

COMMENT:

This board, currently under the Department of Professional and Occupational Licensing contributes to the Centralized Services Program for services performed for the Department. The elimination of these funds could increase the amount contributed by the remaining boards not scheduled for sunset at this time.

Carolyn Dearing for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-79