

HOUSE BILL 490

INTRODUCED BY FABREGA

BY REQUEST OF THE BOARD OF ARCHITECTS

IN THE HOUSE

January 25, 1983	Introduced and referred to Committee on Business and Industry.
February 1, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 2, 1983	Bill printed and placed on members' desks.
February 3, 1983	Second reading, do pass.
February 4, 1983	Considered correctly engrossed.
February 5, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 7, 1983	Introduced and referred to Committee on State Administration.
March 12, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 15, 1983	Second reading, concurred in.
March 17, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 17, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 490
2 INTRODUCED BY F. Lange
3 BY REQUEST OF THE BOARD OF ARCHITECTS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 LAWS CREATING THE STATE BOARD OF ARCHITECTS AND RELATING TO
7 THE LICENSURE OF ARCHITECTS BY THE STATE; GRANTING THE BOARD
8 THE AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 37-65-102,
9 37-65-103, 37-65-202, 37-65-301 THROUGH 37-65-303,
10 37-65-305, 37-65-321, AND 37-65-322, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 37-65-102, MCA, is amended to read:

14 "37-65-102. Definitions. Unless the context requires
15 otherwise, in this chapter the following definitions apply:

16 (1) "Architect" means an individual technically and
17 legally qualified to practice architecture and who is
18 authorized under this chapter to practice architecture.

19 (2) "Board" means the board of architects provided for
20 in 2-15-1871.

21 (3) "Building" means a structure intended primarily
22 for human occupancy or use.

23 (4) "Department" means the department of commerce
24 provided for in Title 2, chapter 15, part 18.

25 (5) "Practice of architecture" means rendering--or

1 offering to render--services by consultations, preliminary
2 studies, drawings, specifications, or other services in
3 connection with the design of a building or addition or
4 alteration thereto, whether one or all of these services are
5 performed either in person or as the directing head of an
6 organization any professional service or creative work
7 requiring the application of advanced knowledge of
8 architectural design, building construction, and standards
9 and involving the constant exercise of discretion and
10 judgment in such activities, in which the safeguarding of
11 life, health, or property is concerned, as consultation,
12 investigation, evaluation, planning, design, or inspection
13 of construction for any public or private building.

14 (6) "Public building" means any building which the
15 state or any political subdivision thereof maintains for the
16 use of the public."

17 Section 2. Section 37-65-103, MCA, is amended to read:

18 "37-65-103. Exemptions. (1) Nothing contained in this
19 chapter shall prevent draftsmen, students, clerks of work,
20 superintendents, and other employees of those lawfully
21 practicing as architects under the provisions of this
22 chapter from acting under the instruction, control, or
23 supervision of their employers or to prevent the employment
24 of superintendents of the construction, enlargement, or
25 structural alteration of buildings or any appurtenance

1 thereto.

2 (2) Nothing contained in this chapter shall be
3 construed to:

4 (a) apply to alterations to any building which do not
5 involve changes affecting the structural safety thereof or
6 the public health and safety;

7 (b) prevent the preparation of details and shop
8 drawings by persons other than architects for use in
9 connection with the execution of their work; or

10 (c) prevent the preparation of drawings or details for
11 fixtures, cabinetwork, furniture, or other interior
12 appliances or equipment or for any work necessary to provide
13 for their installation unless the same involves public
14 health or safety.

15 ~~(3) None of the acts enumerated in subsections (1) and~~
16 ~~(2) shall be interpreted or construed as the practice of~~
17 ~~architecture.~~

18 ~~(4)(3)~~ Nothing in this chapter shall be construed to
19 affect or prevent the following, provided that no words,
20 letters, figures, or other device shall be used in such
21 manner as to tend to convey the impression that the person
22 rendering such service is an architect duly registered under
23 this chapter:

24 (a) consultants, officers, and employees of the United
25 States or the state of Montana while engaged solely in the

1 practice of architecture for said government;

2 (b) professional engineers from performing
3 architectural services which are purely incidental to their
4 engineering practice;

5 (c) any person from planning, designing, altering,
6 repairing, ~~supervising inspecting~~, or engaging in
7 residential construction consisting of less than ~~eight~~ six
8 living units ~~regardless of size or cost~~ or farm buildings
9 ~~which are not intended for use or used as a public building~~
10 regardless of size or cost;

11 (d) the ~~planning, design, alteration, construction, or~~
12 ~~repair, or supervision of construction~~ of a building by its
13 owner if the ~~building is not intended for use or used as a~~
14 ~~public building~~ work does not involve structural change. For
15 the purpose of this section, "structural change" means
16 change that would, in whole or in part, alter the
17 load-bearing capability of the building."

18 Section 3. Section 37-65-202, MCA, is amended to read:

19 "37-65-202. Compensation of board members -- expenses.
20 Each member of the board is entitled to receive compensation
21 ~~and travel expenses as provided for in 37-1-133 at the rate~~
22 of \$25 a day and the actual cost of mileage or other
23 reasonable transportation costs, meals, and lodging when
24 engaged in official state business."

25 Section 4. Section 37-65-301, MCA, is amended to read:

"37-65-301. Certificate License required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "registered licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter."

Section 5. Section 37-65-302, MCA, is amended to read:

"37-65-302. Registration Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be registered licensed as an architect. Only individuals shall be registered licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "registered licensed architects"."

Section 6. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application -- examination -- issuance of certificate license. (1) A person wishing to practice architecture in this state shall apply to the department for a certificate license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading

procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a certificate license to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached."

Section 7. Section 37-65-305, MCA, is amended to read:

"37-65-305. Licensing of and solicitation of business by architects from other states. (1) An architect holding a valid and current license to practice in another state, territory, or country ~~will~~ may be granted a certificate license to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing

1 the board with such additional information or certification
 2 as it may require, offer architectural services in this
 3 state but may accept no commission or otherwise engage in
 4 the practice of architecture within this state until
 5 licensed by the board."

6 Section 8. Section 37-65-321, MCA, is amended to read:

7 "37-65-321. Revocation or suspension of certificate
 8 license -- grounds -- right to notice and hearing. (1) The
 9 board may revoke or suspend a certificate license or take
 10 other appropriate disciplinary action if satisfactory proof
 11 satisfactory is presented to the board is-presented-of-the
 12 following that the licensee:

13 (a) ~~The certificate was~~ obtained his license through
 14 fraud or misrepresentation;

15 (b) ~~The holder of the certificate~~ has been found
 16 guilty by the board or by a court of justice of fraud or
 17 deceit in his professional practice or has been convicted of
 18 a felony by a court of justice related to his professional
 19 practice of architecture;

20 (c) ~~The holder of the certificate has been by the~~
 21 ~~board found guilty~~ has committed acts of gross incompetency
 22 or of recklessness in the planning or construction of
 23 buildings;

24 (d) ~~The holder of the certificate~~ has violated
 25 standards of professional conduct adopted by the board;

1 ~~(2) The board may revoke a certificate if the holder~~
 2 ~~of the certificate has been found guilty by the board of any~~
 3 ~~of the following acts which constitute unprofessional~~
 4 ~~conduct:~~

5 ~~(a) willful departure~~ has departed, in a material
 6 respect, from approved plans or specifications without the
 7 consent of the owner or his authorized representative;

8 ~~(b) willful violation of~~ except to the extent that
 9 the architect reasonably relied upon the advice of another
 10 professional in the field of building design and
 11 construction, has violated the building codes of this state
 12 or a political subdivision;

13 ~~(c) aiding~~ has aided or abetting abetted an
 14 unlicensed person to violate or evade this chapter; or

15 ~~(d) sealing~~ has sealed or signing signed plans or
 16 specifications or other professional work not prepared under
 17 his direct supervision and control.

18 ~~(3) (2) A certificate license~~ may not be revoked until
 19 the party holding the certificate is given notice and on
 20 opportunity for a hearing or suspended except under the
 21 contested case provisions of the Montana Administrative
 22 Procedure Act.

23 ~~(4) (3) If the board's findings and conclusions are~~
 24 ~~adverse to the accused, his certificate stands revoked and~~
 25 ~~annulled at the expiration of 30 days from the final~~

~~decision adverse to the party Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary.~~

Section 9. Section 37-65-322, MCA, is amended to read:

"37-65-322. Penalty. Any person who ~~shall use~~ uses the title "architect" or "registered licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ~~\$200~~ \$500 or more than ~~\$500~~ \$1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought

hereunder."

NEW SECTION. Section 10. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

NEW SECTION. Section 11. Codification instruction. Section 10 is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of section 10 apply to Title 37, chapter 65.

-End-

STATE OF MONTANA

REQUEST NO. 251-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 27, 19 83, there is hereby submitted a Fiscal Note for House Bill 490 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 OF PROPOSED LEGISLATION:

House Bill 490 generally revises the laws creating the state board of architects and relating to the licensure of architects by the state; grants the board the authority to adopt rules; amends Sections 37-65-102, 37-65-103, 37-65-202, 37-65-301 through 37-65-303, 37-65-305, 37-65-321, and 37-65-322, MCA."

ASSUMPTIONS:

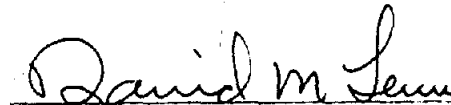
- 1) Assume 30% increase in travel costs with amendment to 37-65-202, MCA.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
Revenue:		
Under Current Law	\$78,863	\$84,015
Under Proposed Law	-0-	-0-
Total Revenue	<u>\$78,863</u>	<u>\$84,015</u>
Expenditures:		
Under Current Law	38,664	40,263
Under Proposed Law	3,031	3,244
Total Expenditures	<u>\$41,695</u>	<u>\$43,507</u>
Net Revenue	<u>\$37,168</u>	<u>\$40,508</u>

TECHNICAL CONFLICTS:

Changing the current statute of the Board of Architects to allow for reimbursement of actual travel costs in 37-65-202, MCA, would be in conflict with legislative intent and existing legislation in 37-1-133, MCA which reads as follows:

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-2-83

Ch. 474, L. 1981: "WHEREAS, during its sunset reviews of the licensing and regulatory boards the Legislative Audit Committee noted that compensation and travel expenses for the boards vary considerably from board to board; and WHEREAS, the various boards have very similar duties and responsibilities.

THEREFORE, it is the intent of this act to provide for the payment of uniform compensation and travel expenses for members of state licensing and regulatory boards." Section 37-1-133, MCA.

FISCAL NOTE 9:V/2

HB490

1 STATEMENT OF INTENT

2 HOUSE BILL 490

3 House Business and Industry Committee

4
5 A statement of intent is required for this bill because
6 it grants the Board of Architects the authority to adopt
7 rules implementing Title 37, Chapter 65.

8 Currently, the chapter of state statutes governing the
9 licensing of architects contains no general grant of
10 rulemaking authority such as those available to most other
11 state agencies and licensing boards. The Board of Architects
12 must therefore rely on the grants of rulemaking authority
13 applicable to all boards contained in 37-1-131 which allows
14 only the adoption of rules "governing licensing,
15 certification, registration and conduct of" architects, upon
16 37-1-136 allowing the board to adopt rules relating to
17 disciplinary action, and upon 2-4-201 requiring every agency
18 to adopt procedural rules. Thus, the board has no authority
19 to adopt rules unauthorized by those sections of law. HB 490
20 grants the board general rulemaking authority to adopt any
21 rule "necessary" to implement all previously existing
22 statutes contained in Title 37, Chapter 65. Any such rules
23 must be adopted under the Montana Administrative Procedure
24 Act.

Approved by Committee
on Business and Industry

HOUSE BILL NO. 490

INTRODUCED BY FABREGA

BY REQUEST OF THE BOARD OF ARCHITECTS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CREATING THE STATE BOARD OF ARCHITECTS AND RELATING TO THE LICENSURE OF ARCHITECTS BY THE STATE; GRANTING THE BOARD THE AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 37-65-102, 37-65-103, 37-65-202, 37-65-301 THROUGH 37-65-303, 37-65-305, 37-65-321, AND 37-65-322, MCA."

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

Section 1. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means rendering--or

offering--to--render--services-by-consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization any professional service or creative work requiring the application of advanced knowledge of architectural designs, building constructions, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public."

Section 2. Section 37-65-103, MCA, is amended to read:

"37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance

thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health and safety;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

~~(3) --None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.~~

~~(4)~~ (3) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States ~~or the state of Montana~~ while engaged solely in the

practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, ~~supervising inspecting~~, or engaging in residential construction consisting of less than eight ~~six~~ living units ~~regardless of size or cost~~ or farm buildings ~~which are not intended for use or used as a public building regardless of size or cost~~;

(d) the ~~planning, design, alteration, construction, or repair, or supervision of construction~~ of a building by its owner if the ~~building is not intended for use or used as a public building~~ work does not involve structural change. For the purpose of this section, "structural change" means change that would, in whole or in part, alter the load-bearing capability of the building.

Section 3. Section 37-65-202, MCA, is amended to read:

"37-65-202. Compensation of board members -- expenses. Each member of the board is entitled to receive compensation ~~and travel expenses as provided for in 37-1-133 at the rate of \$25 a day and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official state~~ BOARD business."

Section 4. Section 37-65-301, MCA, is amended to read:

1 "37-65-301. ~~Certificate License~~ required. Except as
2 provided in this chapter, no person may practice
3 architecture in this state or use the title "architect" or
4 "registered ~~licensed~~ architect" or any words, letters,
5 figures, or other device indicating or intending to imply
6 that he is an architect, without having qualified under this
7 chapter."

8 Section 5. Section 37-65-302, MCA, is amended to read:

9 "37-65-302. ~~Registration~~ Licensure limited to
10 individuals. No firm, company, partnership, association,
11 corporation, or other similar organization shall be
12 registered ~~licensed~~ as an architect. Only individuals shall
13 be registered ~~licensed~~ as architects, but a number of
14 architects constituting a firm may use the collective title
15 "architects" or "registered ~~licensed~~ architects"."

16 Section 6. Section 37-65-303, MCA, is amended to read:

17 "37-65-303. Application -- examination -- issuance of
18 ~~certificate license~~. (1) A person wishing to practice
19 architecture in this state shall apply to the department for
20 a ~~certificate license~~ to do so. A person applying shall have
21 successfully completed the requirement of prerequisites in
22 education, practical experience, and a written examination
23 as prescribed by the board. The examination must be in
24 substantial conformance with the standard national council
25 of architectural registration boards examination and grading

1 procedure, except as modified by board rules.

2 (2) After examination the department shall, if the
3 candidate has been found qualified, grant a ~~certificate~~
4 license to the candidate to practice architecture in this
5 state, which may only be granted on the consent of not less
6 than two members of the board, attested by the secretary,
7 and have the seal of the board attached."

8 Section 7. Section 37-65-305, MCA, is amended to read:

9 "37-65-305. Licensing of and solicitation of business
10 by architects from other states. ~~(1)~~ An architect holding a
11 valid and current license to practice in another state,
12 territory, or country ~~will~~ may be granted a ~~certificate~~
13 license to practice in Montana following presentation of a
14 certificate issued by the national council of architectural
15 registration boards and approved by the board. No
16 arrangement may be made under this section which may lower
17 the standard of practice of architecture in this state. The
18 board may, if considered necessary, require an examination
19 of applicants for a license from other states after careful
20 consideration of the credentials from those states. The
21 board shall by rule establish methods and procedures for
22 investigation of applicants for a license by reciprocity.

23 ~~(2) A nonresident architect who holds an unexpired~~
24 ~~license to practice architecture issued by the state in~~
25 ~~which his principal offices are located may, upon furnishing~~

the board with such additional information or certification as it may require, offer architectural services in this state but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board."

Section 8. Section 37-65-321, MCA, is amended to read:

"37-65-321. Revocation or suspension of certificate license -- grounds -- right to notice and hearing. (1) The board may revoke or suspend a certificate license or take other appropriate disciplinary action if satisfactory proof satisfactory is presented to the board is presented of the following that the licensee:

(a) The certificate was obtained his license through fraud or misrepresentation;

(b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice related to his professional practice of architecture;

(c) The holder of the certificate has been by the board found guilty has committed acts of gross incompetency or of recklessness in the planning or construction of buildings;

(d) The holder of the certificate has violated standards of professional conduct adopted by the board;

(2) The board may revoke a certificate if the holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct:

(a) The holder has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(b) The holder in violation of except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;

(c) The holder has aided or abetting abetted an unlicensed person to violate or evade this chapter; or

(d) The holder has sealed or signing signed plans or specifications or other professional work not prepared under his direct supervision and control.

(3) A certificate license may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

(4) If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of 30 days from the final

1 ~~decision adverse to the party Charges of fraud, deceit,~~
 2 ~~gross incompetence, negligence, or professional misconduct~~
 3 ~~may be brought by any person against any licensee. Such~~
 4 ~~charges shall be in writing, sworn to by the person making~~
 5 ~~them, and filed with the secretary of the board. All~~
 6 ~~charges, unless dismissed by the board as unfounded or~~
 7 ~~trivial, shall be set for hearing within 3 months of filing~~
 8 ~~with the secretary."~~

9 Section 9. Section 37-65-322, MCA, is amended to read:
 10 "37-65-322. Penalty. Any person who ~~shall use~~ uses the
 11 title "architect" or "registered licensed architect" or any
 12 other words, letters, figures, or device indicating or
 13 intending to imply that the person using the same is an
 14 architect or who shall engage in the practice of
 15 architecture within the meaning of this chapter or shall
 16 accept compensation for rendering architectural service
 17 without first having complied with the provisions of this
 18 chapter shall be deemed guilty of a misdemeanor and upon
 19 conviction shall be punished by a fine of not less than \$200
 20 \$500 or more than \$500 ~~\$1,000~~ or by imprisonment in the
 21 county jail for not less than 30 days or more than 6 months
 22 or by both such fine and imprisonment. Any person convicted
 23 a second time for any violation of this chapter shall be
 24 punished by both such fine and imprisonment. The district
 25 court shall have jurisdiction of all prosecutions brought

1 hereunder."

2 NEW SECTION. Section 10. Rulemaking. The board of
 3 architects may adopt, amend, or repeal rules necessary for
 4 the implementation and enforcement of this chapter in
 5 accordance with the provisions of the Montana Administrative
 6 Procedure Act.

7 NEW SECTION. Section 11. Codification instruction.
 8 Section 10 is intended to be codified as an integral part of
 9 Title 37, chapter 65, and the provisions of section 10 apply
 10 to Title 37, chapter 65.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 490

3 House Business and Industry Committee
4

5 A statement of intent is required for this bill because
6 it grants the Board of Architects the authority to adopt
7 rules implementing Title 37, Chapter 65.

8 Currently, the chapter of state statutes governing the
9 licensing of architects contains no general grant of
10 rulemaking authority such as those available to most other
11 state agencies and licensing boards. The Board of Architects
12 must therefore rely on the grants of rulemaking authority
13 applicable to all boards contained in 37-1-131 which allows
14 only the adoption of rules "governing licensing,
15 certification, registration and conduct of" architects, upon
16 37-1-136 allowing the board to adopt rules relating to
17 disciplinary action, and upon 2-4-201 requiring every agency
18 to adopt procedural rules. Thus, the board has no authority
19 to adopt rules unauthorized by those sections of law. HB 490
20 grants the board general rulemaking authority to adopt any
21 rule "necessary" to implement all previously existing
22 statutes contained in Title 37, Chapter 65. Any such rules
23 must be adopted under the Montana Administrative Procedure
24 Act.

THIRD READING

HB490

HOUSE BILL NO. 490

INTRODUCED BY FABREGA

BY REQUEST OF THE BOARD OF ARCHITECTS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CREATING THE STATE BOARD OF ARCHITECTS AND RELATING TO THE LICENSURE OF ARCHITECTS BY THE STATE; GRANTING THE BOARD THE AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 37-65-102, 37-65-103, 37-65-202, 37-65-301 THROUGH 37-65-303, 37-65-305, 37-65-321, AND 37-65-322, MCA."

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

Section 1. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means rendering--or

~~offering--to--render--services-by-consultations--preliminary studies--drawings--specifications--or--other--services--in connection--with--the--design--of--a--building--or--addition--or alteration--thereto--whether--one--or--all--of--these--services--are performed--either--in--person--or--as--the--directing--head--of--an organization any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultations, investigation, evaluation, planning, design, or inspection of construction for any public or private building.~~

~~(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public."~~

Section 2. Section 37-65-103, MCA, is amended to read:

"37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance

thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health and safety;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

~~(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.~~

~~(4)~~ (3) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States ~~or the state of Montana~~ while engaged solely in the

practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising inspecting, or engaging in residential construction consisting of less than eight ~~six~~ living units ~~regardless of size or cost~~ or farm buildings ~~which are not intended for use or used as a public building regardless of size or cost;~~

(d) the ~~planning, design, alteration, construction, or repair, or supervision of construction~~ of a building by its owner if the ~~building is not intended for use or used as a public building~~ work does not involve structural change. For the purpose of this section, "structural change" means change that would, in whole or in part, alter the load-bearing capability of the building."

Section 3. Section 37-65-202, MCA, is amended to read:

"37-65-202. Compensation of board members -- expenses. Each member of the board is entitled to receive compensation ~~and travel expenses as provided for in 37-1-133 at the rate of \$25 a day and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official state BOARD business."~~

Section 4. Section 37-65-301, MCA, is amended to read:

"37-65-301. ~~Certificate License~~ required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "registered licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter."

Section 5. Section 37-65-302, MCA, is amended to read:

"37-65-302. ~~Registration~~ ~~License~~ limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be registered licensed as an architect. Only individuals shall be registered licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "registered licensed architects"."

Section 6. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application -- examination -- issuance of certificate license. (1) A person wishing to practice architecture in this state shall apply to the department for a certificate license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading

procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a ~~certificate license~~ to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached."

Section 7. Section 37-65-305, MCA, is amended to read:

"37-65-305. ~~Licensing of and solicitation of business~~ by architects from other states. (1) An architect holding a valid and current license to practice in another state, territory, or country ~~will~~ may be granted a ~~certificate license~~ to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) ~~A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing~~

1 the board with such additional information or certification
 2 as it may require, offer architectural services in this
 3 state but may accept no commission or otherwise engage in
 4 the practice of architecture within this state until
 5 licensed by the board."

6 Section 8. Section 37-65-321, MCA, is amended to read:

7 "37-65-321. Revocation or suspension of certificate
 8 license -- grounds -- right to notice and hearing. (1) The
 9 board may revoke or suspend a certificate license or take
 10 other appropriate disciplinary action if satisfactory proof
 11 satisfactory is presented to the board is presented of the
 12 following that the licensee:

13 (a) The certificate was obtained his license through
 14 fraud or misrepresentation;

15 (b) The holder of the certificate has been found
 16 guilty by the board or by a court of justice of fraud or
 17 deceit in his professional practice or has been convicted of
 18 a felony by a court of justice related to his professional
 19 practice of architecture;

20 (c) The holder of the certificate has been by the
 21 board found guilty has committed acts of gross incompetency
 22 or of recklessness in the planning or construction of
 23 buildings;

24 (d) The holder of the certificate has violated
 25 standards of professional conduct adopted by the board;

1 ~~(2) The board may revoke a certificate if the holder~~
 2 ~~of the certificate has been found guilty by the board of any~~
 3 ~~of the following acts which constitute unprofessional~~
 4 ~~conducts:~~

5 ~~(a) willful departure has departed, in a material~~
 6 ~~respect, from approved plans or specifications without the~~
 7 ~~consent of the owner or his authorized representative;~~

8 ~~(b) willful violation of except to the extent that~~
 9 ~~the architect reasonably relied upon the advice of another~~
 10 ~~professional in the field of building design and~~
 11 ~~construction, has violated the building codes of this state~~
 12 ~~or a political subdivision;~~

13 ~~(c) aiding has aided or abetting abetted an~~
 14 ~~unlicensed person to violate or evade this chapter; or~~

15 ~~(d) sealing has sealed or signing signed plans or~~
 16 ~~specifications or other professional work not prepared under~~
 17 ~~his direct supervision and control.~~

18 ~~(3) (2) A certificate license may not be revoked until~~
 19 ~~the party holding the certificate is given notice and an~~
 20 ~~opportunity for a hearing or suspended except under the~~
 21 ~~contested case provisions of the Montana Administrative~~
 22 ~~Procedure Act.~~

23 ~~(4) (3) If the board's findings and conclusions are~~
 24 ~~adverse to the accused, his certificate stands revoked and~~
 25 ~~annulled at the expiration of 30 days from the date~~

~~decision adverse to the party. Charges of frauds, deceptions, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary."~~

Section 9. Section 37-65-322, MCA, is amended to read:

"37-65-322. Penalty. Any person who ~~shall use~~ uses the title "architect" or "registered licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$200 ~~\$500~~ or more than \$500 ~~\$1,000~~ or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought

hereunder."

NEW SECTION. Section 10. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

NEW SECTION. Section 11. Codification instruction. Section 10 is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of section 10 apply to Title 37, chapter 65.

-End-

March 12, 1983

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House No. 490 be amended as follows:

1. Title, line 9.

Strike: "37-65-103,"

2. Page 2.

Following: line 16

Insert: "(6) 'Public building' means any building which the state
or any political subdivision thereof maintains for the use of the
public."

3. Page 2, line 17 through page 4, line 17.

Strike: section 2 in its entirety

Renumber: subsequent sections

4. Page 4, line 22

Strike: "of \$25 a day"

Insert: "provided in 37-1-133"

5. Page 10, line 8.

Strike: "10"

Insert: "9"

6. Page 10, line 9.

Strike: "10"

Insert: "9"

1 STATEMENT OF INTENT

2 HOUSE BILL 490

3 House Business and Industry Committee

4
5 A statement of intent is required for this bill because
6 it grants the Board of Architects the authority to adopt
7 rules implementing Title 37, Chapter 65.

8 Currently, the chapter of state statutes governing the
9 licensing of architects contains no general grant of
10 rulemaking authority such as those available to most other
11 state agencies and licensing boards. The Board of Architects
12 must therefore rely on the grants of rulemaking authority
13 applicable to all boards contained in 37-1-131 which allows
14 only the adoption of rules "governing licensing,
15 certification, registration and conduct of" architects, upon
16 37-1-136 allowing the board to adopt rules relating to
17 disciplinary action, and upon 2-4-201 requiring every agency
18 to adopt procedural rules. Thus, the board has no authority
19 to adopt rules unauthorized by those sections of law. HB 490
20 grants the board general rulemaking authority to adopt any
21 rule "necessary" to implement all previously existing
22 statutes contained in Title 37, Chapter 65. Any such rules
23 must be adopted under the Montana Administrative Procedure
24 Act.

REFERENCE BILL

HB 490

HOUSE BILL NO. 490

INTRODUCED BY FABREGA

BY REQUEST OF THE BOARD OF ARCHITECTS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CREATING THE STATE BOARD OF ARCHITECTS AND RELATING TO THE LICENSURE OF ARCHITECTS BY THE STATE; GRANTING THE BOARD THE AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 37-65-102, 37-65-103, 37-65-202, 37-65-301 THROUGH 37-65-303, 37-65-305, 37-65-321, AND 37-65-322, MCA."

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

Section 1. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means rendering--or

offering--to--render--services-by-consultations--preliminary studies--drawings--specifications--or--other--services--in connection--with--the--design--of--a--building--or--addition--or alteration--thereto--whether--one--or--all--of--these--services--are performed--either--in--person--or--as--the--directing--head--of--an organization any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

(6) "PUBLIC BUILDING" MEANS ANY BUILDING WHICH THE STATE OR ANY POLITICAL SUBDIVISION THEREOF MAINTAINS FOR THE USE OF THE PUBLIC."

Section 2. Section 37-65-103, MCA, is amended to read:

"37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks, or work superintendents and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or

1 supervision-of-their-employers-or-to-prevent-the-employment
2 of--superintendents--of--the--construction--enlargement--or
3 structural--alteration--of--buildings--or--any--appurtenance
4 thereto;

5 (2)--Nothing--contained--in--this--chapter--shall--be
6 construed-to-

7 (a)--apply-to-alterations-to-any-building-which-do-not
8 involve--changes--affecting-the-structural-safety-thereof-or
9 the-public-health-and-safety;

10 (b)--prevent-the-preparation-of--details--and--shop
11 drawings--by--persons--other--than--architects--for--use--in
12 connection-with-the-execution-of-their-work--or

13 (c)--prevent-the-preparation-of-drawings-or-details-for
14 fixtures--cabinetwork--furniture--or--other--interior
15 appliances-or-equipment-or-for-any-work-necessary-to-provide
16 for--their--installation-unless-the-same--involves-public
17 health-or-safety;

18 (3)--None-of-the-acts-enumerated-in-subsections-(1)-and
19 (2)-shall-be-interpreted-or-construed--as--the--practice-of
20 architecture;

21 (4)~~(3)~~--Nothing--in--this--chapter--shall--be--construed-to
22 affect-or-prevent-the-following--provided--that--no--words
23 letters--figures--or--other--device--shall--be--used--in--such
24 manner-as-to-tend-to-convey-the-impression-that--the--person
25 rendering-such-service-is-an-architect-duty-registered-under

1 this-chapter;

2 (a)--consultants--officers--and--employees--of--the--United
3 States ~~or--the--state--of--Montana~~ while-engaged-as-employees-in-the
4 practice-of-architecture-for-said-government;

5 (b)--professional--engineers--from--performing
6 architectural--services-which-are-purely-incidental-to-their
7 engineering-practice;

8 (c)--any-person--from--planning--designing--altering
9 repairing--supervising ~~installing~~--or--engaging--in
10 residential-construction-consisting-of-less-than-eight ~~six~~
11 living-units--regardless-of-size-or-cost--or--form--buildings
12 which-are-not-intended-for-use-or-used-as-a-public--building
13 ~~regardless-of-size-or-cost~~;

14 (d)--the-planning--designing--alteration--construction--or
15 repair--or-supervision-of-construction-of-a-building-by-its
16 owner-if-the-building-is-not-intended-for-use-or-used--as--a
17 public-building ~~work-does-not-involve-structural-changes~~ for
18 the--purpose--of--this--section--"structural-change" means
19 change--that--would--in--whole--or--in--part--alter--the
20 load-bearing-capability-of-the-building;"

21 Section 2. Section 37-65-202, MCA, is amended to read:

22 "37-65-202. Compensation of board members -- expenses.
23 Each member of the board is entitled to receive compensation
24 and--travel--expenses-as-provided-for-in-37-1-133 at the rate
25 of \$25 a day PROVIDED IN 37-1-133 and the actual cost of

1 ~~mileage or other reasonable transportation costs, meals, and~~
 2 ~~lodging when engaged in official state BOARD business."~~

3 Section 3. Section 37-65-301, MCA, is amended to read:

4 "37-65-301. ~~Certificate~~ License required. Except as
 5 provided in this chapter, no person may practice
 6 architecture in this state or use the title "architect" or
 7 "registered ~~licensed~~ architect" or any words, letters,
 8 figures, or other device indicating or intending to imply
 9 that he is an architect, without having qualified under this
 10 chapter."

11 Section 4. Section 37-65-302, MCA, is amended to read:

12 "37-65-302. ~~Registration~~ Licensure limited to
 13 individuals. No firm, company, partnership, association,
 14 corporation, or other similar organization shall be
 15 registered ~~licensed~~ as an architect. Only individuals shall
 16 be registered ~~licensed~~ as architects, but a number of
 17 architects constituting a firm may use the collective title
 18 "architects" or "registered ~~licensed~~ architects"."

19 Section 5. Section 37-65-303, MCA, is amended to read:

20 "37-65-303. Application -- examination -- issuance of
 21 ~~certificate license~~. (1) A person wishing to practice
 22 architecture in this state shall apply to the department for
 23 a ~~certificate license~~ to do so. A person applying shall have
 24 successfully completed the requirement of prerequisites in
 25 education, practical experience, and a written examination

1 as prescribed by the board. The examination must be in
 2 substantial conformance with the standard national council
 3 of architectural registration boards examination and grading
 4 procedure, except as modified by board rules.

5 (2) After examination the department shall, if the
 6 candidate has been found qualified, grant a ~~certificate~~
 7 license to the candidate to practice architecture in this
 8 state, which may only be granted on the consent of not less
 9 than two members of the board, attested by the secretary,
 10 and have the seal of the board attached."

11 Section 6. Section 37-65-305, MCA, is amended to read:

12 "37-65-305. Licensing of and solicitation of business
 13 ~~by architects from other states.~~ (1) An architect holding a
 14 valid and current license to practice in another state,
 15 territory, or country ~~will~~ may be granted a ~~certificate~~
 16 license to practice in Montana following presentation of a
 17 certificate issued by the national council of architectural
 18 registration boards and approved by the board. No
 19 arrangement may be made under this section which may lower
 20 the standard of practice of architecture in this state. The
 21 board may, if considered necessary, require an examination
 22 of applicants for a license from other states after careful
 23 consideration of the credentials from those states. The
 24 board shall by rule establish methods and procedures for
 25 investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing the board with such additional information or certification as it may require, offer architectural services in this state but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board."

Section 7. Section 37-65-321, MCA, is amended to read:

"37-65-321. Revocation or suspension of certificate license -- grounds -- right to notice and hearing. (1) The board may revoke or suspend a certificate license or take other appropriate disciplinary action if satisfactory proof satisfactory is presented to the board is presented of the following that the licensee:

(a) The certificate was obtained his license through fraud or misrepresentation;

(b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice related to his professional practice of architecture;

(c) The holder of the certificate has been by the board found guilty has committed acts of gross incompetency or of recklessness in the planning or construction of

buildings;

(d) The holder of the certificate has violated standards of professional conduct adopted by the board;

(2) The board may revoke a certificate if the holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct:

(a) The holder has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(b) The holder in violation of except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction has violated the building codes of this state or a political subdivision;

(c) The holder has aided or abetting abetted an unlicensed person to violate or evade this chapter; or

(d) The holder has sealed or signing signed plans or specifications or other professional work not prepared under his direct supervision and control.

(3) A certificate license may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

1 ~~{44131 If the board's findings and conclusions are~~
 2 ~~adverse to the accused, his certificate stands revoked and~~
 3 ~~annulled at the expiration of 30 days from the final~~
 4 ~~decision adverse to the party~~ Charges of fraud, deceit,
 5 ~~gross incompetence, negligence, or professional misconduct~~
 6 ~~may be brought by any person against any licensee. Such~~
 7 ~~charges shall be in writing, sworn to by the person making~~
 8 ~~them, and filed with the secretary of the board. All~~
 9 ~~charges, unless dismissed by the board as unfounded or~~
 10 ~~trivial, shall be set for hearing within 3 months of filing~~
 11 ~~with the secretary."~~

12 Section 8. Section 37-65-322, MCA, is amended to read:
 13 "37-65-322. Penalty. Any person who ~~shall use~~ uses the
 14 title "architect" or "registered licensed architect" or any
 15 other words, letters, figures, or device indicating or
 16 intending to imply that the person using the same is an
 17 architect or who shall engage in the practice of
 18 architecture within the meaning of this chapter or shall
 19 accept compensation for rendering architectural service
 20 without first having complied with the provisions of this
 21 chapter shall be deemed guilty of a misdemeanor and upon
 22 conviction shall be punished by a fine of not less than \$200
 23 \$500 or more than \$500 ~~\$1,000~~ or by imprisonment in the
 24 county jail for not less than 30 days or more than 6 months
 25 or by both such fine and imprisonment. Any person convicted

1 a second time for any violation of this chapter shall be
 2 punished by both such fine and imprisonment. The district
 3 court shall have jurisdiction of all prosecutions brought
 4 hereunder."

5 ~~NEW SECTION.~~ Section 9. Rulemaking. The board of
 6 architects may adopt, amend, or repeal rules necessary for
 7 the implementation and enforcement of this chapter in
 8 accordance with the provisions of the Montana Administrative
 9 Procedure Act.

10 ~~NEW SECTION.~~ Section 10. Codification instruction.
 11 Section ~~10~~ 2 is intended to be codified as an integral part
 12 of Title 37, chapter 65, and the provisions of section ~~10~~ 2
 13 apply to Title 37, chapter 65.

-End-