

SENATE BILL NO. 449

Introduced: 02/16/83

Referred to Committee on Labor & Employment Relations:

02/16/83

Hearing: 2/17/83

Died in Committee.

1 *Sen. 2* BILL NO. *449*  
 2 INTRODUCED BY *Richard E. Manning*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 LICENSING OF PERSONS WHO USE EXPLOSIVES IN THE DEMOLITION OR  
 6 CONSTRUCTION OF BUILDINGS OR FOR OTHER PURPOSES; PROHIBITING  
 7 SUCH USE OF EXPLOSIVES UNLESS UNDER THE SUPERVISION OF A  
 8 LICENSEE; PROVIDING FOR LICENSING REQUIREMENTS AND  
 9 EXAMINATIONS; PROVIDING FOR LICENSURE BY RECIPROCITY;  
 10 PROVIDING FOR REGULATION OF THE USE OF EXPLOSIVES; GRANTING  
 11 RULEMAKING POWER TO THE WORKERS' COMPENSATION DIVISION;  
 12 PROVIDING FOR DISCIPLINE OF LICENSEES; PROVIDING FOR CIVIL  
 13 AND CRIMINAL PENALTIES; AND SPECIFYING THE APPLICATION OF  
 14 THE ACT TO CURRENT PRACTICES."  
 15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 17 Section 1. Construction blasting restrictions --  
 18 license required -- definitions -- exemptions. (1) No  
 19 person may engage in the practice of construction blasting  
 20 unless under the supervision of a person licensed as a  
 21 construction blaster by the workers' compensation division.  
 22 (2) For the purposes of [this act]:  
 23 (a) "construction blaster" means a person who engages  
 24 in construction blasting;  
 25 (b) "construction blasting" means the use of

1 explosives to:  
 2 (i) reduce, destroy, or weaken any residential,  
 3 commercial, or other building; or  
 4 (ii) excavate any ditch, trench, cut, or hole or  
 5 reduce, destroy, weaken, or cause a change in grade of any  
 6 land formation in the construction of any building, highway,  
 7 road, pipeline, sewerline, or electric or other utility  
 8 line;  
 9 (c) "division" means the workers' compensation  
 10 division of the department of labor and industry provided  
 11 for in 2-15-1702;  
 12 (d) "explosive" has the meaning given in 50-38-101;  
 13 (e) "magazine" has the meaning given in 50-38-101.  
 14 (3) Nothing in [this act] applies to the private or  
 15 commercial use of explosives by persons engaged in logging  
 16 or mining of any kind or to the private use of explosives in  
 17 the removal of stumps and rocks from land owned by the  
 18 person using the explosives.  
 19 Section 2. General qualifications. Every person making  
 20 initial application to the division for a license as a  
 21 construction blaster shall:  
 22 (1) pay an application fee to the division; and  
 23 (2) furnish proof to the division that he:  
 24 (a) is at least 18 years old;  
 25 (b) is of good moral character;

1 (c) has not been convicted of a felony or misdemeanor  
2 involving the use of explosives;

3 (d) is not addicted to narcotic drugs or intemperate  
4 in the use of alcohol; and

5 (e) has satisfied the requirements for training and  
6 experience in construction blasting established by [section  
7 3] and the rules of the division.

8 Section 3. Training and experience requirements. (1)  
9 Every person applying for licensure as a construction  
10 blaster shall furnish proof, under oath, on a form provided  
11 by the division, that he has:

12 (a) successfully completed a training program in  
13 construction blasting that has been recognized by the  
14 explosives or construction industry and approved by the  
15 division; and

16 (b) at least 1 year of posttraining experience in  
17 construction blasting and because of that experience is  
18 familiar with the practical aspects of construction  
19 blasting.

20 (2) No training program may be approved by the  
21 division that does not offer comprehensive instruction in  
22 types of explosives, methods and purposes of their use, and  
23 safety and storage. The division shall by rule adopt a list  
24 of approved training programs.

25 Section 4. Licensure by examination -- fee. (1) The

1 division shall, at least once a year, administer an  
2 examination to applicants meeting the requirements of  
3 [sections 2 and 3] and the rules adopted by the division  
4 under these sections. The division shall determine the  
5 subjects, scope, and acceptable level of performance for all  
6 examinations, which may be written, oral, or both. The  
7 examination shall at a minimum test the applicant's  
8 knowledge of the procedures, standards, methods, and  
9 safeguards recommended by the institute of makers of  
10 explosives (IME) and the knowledge of the applicant of the  
11 rules of the division governing construction blasting.

12 (2) Each applicant for licensure by examination shall  
13 pay an examination fee to the division.

14 (3) An applicant for a license who has previously  
15 taken and failed the examination required by this section  
16 may retake it at any time within 2 years without again  
17 furnishing proof of compliance with [section 3], upon  
18 payment to the division of a reexamination fee.

19 Section 5. Issuance of license -- fee. Upon receipt  
20 of a license fee, the division shall issue a license to each  
21 person who meets the requirements for licensure as  
22 prescribed in [sections 1 through 13]. The license must  
23 include the dates of issuance and expiration and shall bear  
24 a serial number. It must be signed by the administrator of  
25 the division.

1       Section 6. Licensure by reciprocity. Upon receipt of a  
2 license fee, the division shall issue a license to any  
3 person fulfilling the requirements of [subsections (2)(a)  
4 through (2)(d) of section 2] who holds a certificate,  
5 license, or permit, issued by another state or any agency of  
6 the United States, allowing him to supervise or engage in  
7 the practice of construction blasting if the division finds  
8 that the certificate, license, or permit was issued upon the  
9 satisfactory completion of requirements substantially  
10 equivalent to the requirements of [sections 2 and 3].

11       Section 7. Annual renewal. (1) A license issued under  
12 [this act] expires January 1 following the date of its  
13 issuance or renewal and is invalid thereafter. The division  
14 shall notify each person licensed under [this act] of the  
15 date of the expiration of his license and the amount of his  
16 renewal fee. The notice must be mailed to each licensed  
17 construction blaster at his listed address at least 1 month  
18 before the expiration of his license.

19       (2) Renewal may be made by application during the 60  
20 days prior to the expiration date. Failure on the part of a  
21 licensee to pay his renewal fee by the expiration date does  
22 not deprive him of the right to renew his license, but the  
23 fee must be increased 10% for each month or major portion  
24 thereof that the payment of the renewal fee is delayed after  
25 the expiration date. The maximum fee for delayed renewal may

1 not exceed twice the normal renewal fee. Application for  
2 renewal following a lapse of 1 year or more is subject to  
3 review by the division, and the applicant may be required to  
4 successfully complete an examination if the division so  
5 determines.

6       Section 8. License -- form -- pocket card. (1) The  
7 division shall prescribe the form of license.

8       (2) The division shall annually prepare and deliver a  
9 pocket card certifying that the person whose name appears on  
10 the card is a licensed construction blaster and stating the  
11 period for which fees have been paid.

12       Section 9. Rules for use of explosives -- variances.

13       (1) The division shall adopt rules governing the use of  
14 explosives in construction blasting. The rules must include  
15 provisions to:

16       (a) regulate the method of withdrawal of explosives  
17 from the magazine in which they are kept;

18       (b) prevent the accidental detonation of explosives;

19       (c) prevent injury from blasting debris to persons  
20 near blast sites;

21       (d) provide for notification of blasting to the owners  
22 or operators of gas and electric utilities; and

23       (e) regulate the drilling of holes for explosives and  
24 the loading and firing of explosives. Rules adopted under  
25 this subsection (1)(e) must include the American table of

1 distances, published by the institute of makers of  
2 explosives (IME).

3 (2) The division shall adopt rules providing for  
4 variances from the rules required by subsection (1).  
5 Variances may be granted by the division on a case-by-case  
6 basis for the purpose of individual construction blasting  
7 operations only if it is shown by the affidavit of a  
8 construction blaster licensed under [this act] that:

9 (a) compliance with the rule for which a variance is  
10 sought would be impracticable; and

11 (b) the proposed variance from division rules will not  
12 constitute a danger to public safety.

13 Section 10. General rulemaking power. The division  
14 shall adopt rules to:

15 (1) implement the training and experience requirements  
16 of [section 3];

17 (2) prescribe the amount of the fees provided for in  
18 [sections 2, 4, and 5 through 7], which fees must be  
19 nonrefundable, must be in an amount commensurate with the  
20 cost of the respective program area, and must be deposited  
21 in the earmarked revenue fund for the use of the division;

22 (3) regulate the use of explosives and grant variances  
23 under the provisions of [section 9];

24 (4) provide for the form of the license and pocket  
25 card; and

1 (5) provide for the conduct of the business of the  
2 division under [this act] and govern its proceedings under  
3 [section 11].

4 Section 11. Revocation, suspension, or refusal to  
5 renew certificate -- grounds -- procedure. (1) The  
6 division may reprimand or revoke, suspend, or refuse to  
7 renew the license of a person found guilty of:

8 (a) fraud or deceit in obtaining a license;

9 (b) gross negligence, incompetency, or misconduct in  
10 the practice of construction blasting;

11 (c) a felony involving the use of explosives; or

12 (d) violation of the rules of the division.

13 (2) Any person may make charges of fraud, deceit,  
14 gross negligence, incompetency, or misconduct against a  
15 licensee. The charges must be made by affidavit and  
16 subscribed and sworn to by the person making them and filed  
17 with the division. The charges must be investigated by the  
18 division and, unless the division dismisses the charges  
19 after investigation as unfounded or trivial, it shall act on  
20 the charges within 6 months after the date on which the  
21 charges were made. The division is considered to have acted  
22 on the charges if it has given notice by mail to the  
23 licensee of its intent to revoke, suspend, or refuse to  
24 renew his license and the notice contains those matters  
25 required by the Montana Administrative Procedure Act.

1       (3) The division may require a licensee to take a  
2 written or oral examination, or both, in a proceeding to  
3 reprimand or revoke, suspend, or refuse to renew.

4       Section 12. Penalty -- Injunction. (1) A person  
5 convicted of violating any provision in [sections 1 through  
6 10] or the rules of the division is guilty of a misdemeanor,  
7 punishable by a fine of \$500 or imprisonment for 6 months or  
8 both such fine and imprisonment.

9       (2) In addition, the district court may enjoin any  
10 violation or threatened violation of the requirements of  
11 [sections 1 through 10] or the rules of the division as a  
12 nuisance per se and the division, the attorney general, or  
13 any county attorney may institute proceedings for an  
14 injunction.

15       Section 13. Application to existing practices. Any  
16 person licensed as a construction blaster by any other state  
17 or agency of the United States on October 1, 1983, who  
18 presents his license to the division before January 1, 1984,  
19 must be issued a license to act as a construction blaster  
20 subject to the provisions of [sections 1 through 12].

-End-

## STATE OF MONTANA

REQUEST NO. 464-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 449 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:

Senate Bill 449 provides for the licensing of persons who use explosives in the demolition or construction of buildings or for other purposes; prohibits such use of explosives in the demolition or construction of buildings or for other purposes; prohibits such use of explosives unless under the supervision of a licensee; provides for licensing requirements and examinations; provides for licensure by reciprocity; provides for regulation of the use of explosives; grants rulemaking power to the Workers' Compensation Division; provides for discipline of licensees; provides for civil and criminal penalties; and specifies the application of the act to current practices."

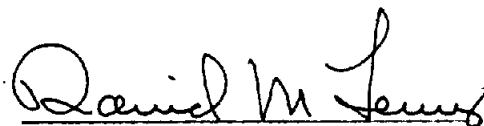
ASSUMPTIONS:

- 1) There will be between 500-600 licenses issued per year.
- 2) Testing procedures will be established which will conform to all federal regulations.
- 3) Costs associated with implementing the program will be comparable to the division's current mining education program.
- 4) 1/2 FTE at Grade 7 will be required to complete the administrative details of issuing licenses, collecting fees, making follow-up billings, etc.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Personal Services		
1 Full Time Safety Officer (Grade 13)	\$ 18,397	\$ 18,397
1/2 FTE clerical support (Grade 7)	5,863	5,863
Benefits at 16.2%	3,930	3,930
Total Personnel Costs	28,190	28,190
Operating Expenses	12,375	12,375
TOTAL COSTS	<u>\$ 40,565</u>	<u>\$ 40,565</u>

FISCAL NOTE 16:DD/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83