

SENATE BILL NO. 194

INTRODUCED BY MANNING, DRISCOLL, LYBECK

IN THE SENATE

January 22, 1985	Introduced and referred to Committee on Labor and Employment Relations.
January 23, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 8, 1985	Committee recommend bill do pass as amended. Report adopted.
February 9, 1985	Bill printed and placed on members' desks.
February 11, 1985	Second reading, pass consideration.
February 12, 1985	Statement of Intent attached. Second reading, do pass.
February 13, 1985	Correctly engrossed.
February 14, 1985	Third reading, passed. Ayes, 40; Noes, 10. Transmitted to House.

IN THE HOUSE

February 15, 1985	New Fiscal Note requested.
February 20, 1985	New Fiscal Note returned.
February 27, 1985	Introduced and referred to Committee on Business and Labor.

March 14, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1985	Second reading, concurred in.
March 18, 1985	On motion, taken from third reading and referred to second reading.
March 20, 1985	Second reading, concurred in as amended.
March 22, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

March 22, 1985	Received from House.
March 27, 1985	Second reading, amendments concurred in.
March 29, 1985	Third reading, amendments concurred in. Ayes, 49; Noes, 0. Sent to enrolling. Reported correctly enrolled.

1 *Senate* BILL NO. *194*
 2 INTRODUCED BY *Richard E. Manning* *Trisnell*
 3 *Hyland*
 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 CERTAIN OTHER PURPOSES;
 7 PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER
 8 THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING
 9 REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF
 10 PERSONS LICENSED BY OTHER JURISDICTIONS; PROVIDING FOR
 11 REGULATION OF THE USE OF EXPLOSIVES; GRANTING RULEMAKING
 12 POWER TO THE WORKERS' COMPENSATION DIVISION; PROVIDING FOR
 13 DISCIPLINE OF LICENSEES; AND PROVIDING FOR CIVIL AND
 14 CRIMINAL PENALTIES."

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 licensed or under the supervision of a person
 21 licensed as a construction blaster by the workers'
 22 compensation division.

23 (2) For the purposes of [this act]:

24 (a) "construction blaster" means a person who engages
 25 in construction blasting;

1 (b) "construction blasting" means the use of
 2 explosives to:

3 (i) reduce, destroy, or weaken any residential,
 4 commercial, or other building; or

5 (ii) excavate any ditch, trench, cut, or hole or
 6 reduce, destroy, weaken, or cause a change in grade of any
 7 land formation in the construction of any building, highway,
 8 road, pipeline, sewerline, or electric or other utility
 9 line;

10 (c) "division" means the workers' compensation
 11 division of the department of labor and industry provided
 12 for in 2-15-1702;

13 (d) "explosive" has the meaning given in 50-38-101;

14 (e) "magazine" has the meaning given in 50-38-101.

15 (3) Nothing in [this act] applies to the private or
 16 commercial use of explosives by persons engaged in farming,
 17 ranching, logging, or mining of any kind or to the private
 18 use of explosives in the removal of stumps and rocks from
 19 land owned by the person using the explosives, except that
 20 the persons exempted from [this act] by this subsection must
 21 comply with rules adopted under [section 9(1)(c)] and the
 22 provisions of [section 12] apply to a violation of those
 23 rules by an exempted person.

24 (4) [This act] does not apply to persons conducting
 25 blasting operations when the persons and operations are

1 subject to rules adopted under and implementing
2 82-4-231(3)(e).

3 Section 2. General qualifications. A person making
4 initial application to the division for a license as a
5 construction blaster shall:

- 6 (1) pay an application fee to the division; and
7 (2) furnish proof under oath, on a form provided by
8 the division, that he:
- 9 (a) is at least 18 years old;
10 (b) is of good moral character;
11 (c) has not been convicted of a felony or misdemeanor
12 involving the use of explosives;
13 (d) is not addicted to narcotic drugs or intemperate
14 in the use of alcohol; and
15 (e) has satisfied the requirements for training and
16 experience in construction blasting established by [section
17 3] and the rules of the division.

18 Section 3. Training and experience requirements. (1) A
19 person applying for licensure as a construction blaster
20 shall furnish proof, under oath, on a form provided by the
21 division, that he has:

- 22 (a) successfully completed a training program in
23 construction blasting that has been recognized by the
24 explosives or construction industry and approved by the
25 division; and

1 (b) at least 1 year of posttraining experience in
2 construction blasting and because of that experience is
3 familiar with the practical aspects of construction
4 blasting.

5 (2) No training program may be approved by the
6 division that does not offer comprehensive instruction in
7 types of explosives, methods and purposes of their use, and
8 safety and storage. The division shall by rule adopt a list
9 of approved training programs.

10 Section 4. Licensure by examination -- fee. (1) The
11 division shall, at least once a year, administer an
12 examination to applicants meeting the requirements of
13 [sections 2 and 3] and the rules adopted by the division.
14 The division shall determine the subjects, scope, and
15 acceptable level of performance for all examinations. The
16 examination may be written, oral, or both. The examination
17 shall at a minimum test the applicant's knowledge of the
18 rules of the division governing construction blasting.

19 (2) An applicant for licensure by examination shall
20 pay an examination fee to the division.

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

1 Section 5. Issuance of license -- fee. Upon receipt
2 of a license fee, the division shall issue a license to each
3 person who meets the requirements for licensure as
4 prescribed in [this act]. The license must include the
5 dates of issuance and expiration and a serial number. It
6 must be signed by the administrator of the division.

7 Section 6. Licensure of persons licensed by other
8 jurisdictions. Upon receipt of a license fee, the division
9 shall issue a license to any person fulfilling the
10 requirements of [section 2(2)(a) through (2)(d)] who holds a
11 certificate, license, or permit, issued by another state or
12 any agency of the United States, allowing him to supervise
13 or engage in the practice of construction blasting if the
14 division finds that the certificate, license, or permit was
15 issued upon the satisfactory completion of requirements
16 substantially equivalent to the requirements of [sections 2,
17 3, and 4].

18 Section 7. Annual renewal. (1) A license issued under
19 [this act] expires January 1 following the date of its
20 issuance or renewal and is invalid thereafter. The division
21 shall notify each person licensed under [this act] of the
22 date of the expiration of his license and the amount of his
23 renewal fee. The notice must be mailed to each licensed
24 construction blaster at his listed address at least 1 month
25 before the expiration of his license.

1 (2) Renewal may be made by application during the 60
2 days prior to the expiration date. Failure on the part of a
3 licensee to pay his renewal fee by the expiration date does
4 not deprive him of the right to renew his license, but the
5 fee must be increased 10% for each month or major portion
6 thereof that the payment of the renewal fee is delayed after
7 the expiration date. The maximum fee for delayed renewal may
8 not exceed twice the normal renewal fee. Application for
9 renewal following a lapse of 1 year or more is subject to
10 review by the division, and the applicant may be required to
11 successfully complete an examination.

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

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

18 Section 9. Rules for use of explosives -- variances.
19 (1) The division shall adopt rules governing the use of
20 explosives in construction blasting. The rules must include
21 provisions to:

- 22 (a) regulate the method of withdrawal of explosives
23 from the magazine in which they are kept;
24 (b) prevent the accidental detonation of explosives;
25 (c) prevent injury from blasting to persons and

1 property near blast sites;

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

4 (e) regulate the drilling of holes for explosives and
5 the loading and firing of explosives.

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

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

14 (b) the proposed variance from division rules will not
15 constitute a danger to property or public safety.

16 Section 10. General rulemaking power. The division
17 shall adopt rules to:

18 (1) implement the training and experience requirements
19 of [section 3];

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

25 (3) regulate the use of explosives and grant variances

1 under the provisions of [section 9];

2 (4) provide for the form of the license and pocket
3 card provided for in [section 8]; and

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

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

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

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

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

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

16 (2) A person may make charges under subsection (1)
17 against a licensee. The charges must be made by affidavit,
18 subscribed and sworn to by the person making them, and filed
19 with the division. The charges must be investigated by the
20 division. Unless the division, after investigation,
21 dismisses the charges as unfounded or trivial, it shall
22 within 6 months after the date on which the charges were
23 made give notice by mail to the licensee of its intent to
24 reprimand him or to revoke, suspend, or refuse to renew his
25 license. The notice must contain those matters required by

1 the Montana Administrative Procedure Act.

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

6 Section 12. Penalty -- injunction. (1) A person
7 convicted of violating any provision of [this act] or the
8 rules of the division is guilty of a misdemeanor and shall
9 be imprisoned in the county jail for a term not to exceed 6
10 months or fined an amount not to exceed \$500, or both.

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

16 NEW SECTION. Section 13. Application to existing
17 licensees. Any person licensed as a construction blaster by
18 any state or any agency of the United States on October 1,
19 1985, who presents his license to the division before
20 January 1, 1986, must be issued a license to act as a
21 construction blaster but is subject to the provisions of
22 [sections 1 and 7 through 12].

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 192-85

Form BD-15

In compliance with a written request received January 23 19 85, there is hereby submitted a Fiscal Note for S.B. 194 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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:

"An Act providing for the licensing of persons who use explosives in the demolition or construction of buildings or for certain other purposes; prohibiting such use of explosives unless licensed or under the supervision of a licensee; providing for licensing requirements and examinations; providing for licensure of persons licensed by other jurisdictions; providing for regulation of the use of explosive; granting rulemaking power to the Workers' Compensation Division; providing for discipline of licensees; and providing for civil and criminal penalties."

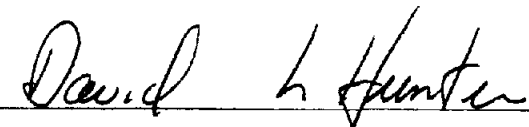
ASSUMPTIONS:

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 EARMARKED SPECIAL REVENUE FUND:

		<u>Current Law</u>	<u>Proposed Law</u>	<u>Biennium</u>
<u>Revenues:</u>	<u>FY 1986</u>	\$ -0-	\$ 51,000	\$ 93,000
	<u>FY 1987</u>	-0-	\$ 42,000	
<u>Expenditures:</u>	<u>FY 1986</u>	\$ -0-	\$ 50,868	\$ 92,742
	<u>FY 1987</u>	\$ -0-	\$ 41,874	

No General Fund Impact.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 29, 1985
SB 194

STATE OF MONTANA
FISCAL NOTE

Amended
REQUEST NO. FNN192-85
Form BD-15

In compliance with a written request received February 15 19 85, there is hereby submitted a Fiscal Note for S.B. 194 Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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:

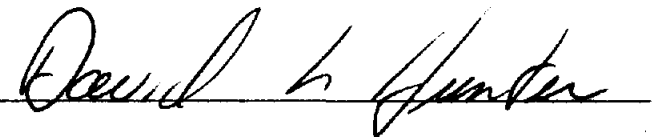
"An Act providing for the licensing of persons who use explosives in the demolition or construction of buildings or for certain other purposes; prohibiting such use of explosives unless licensed or under the supervision of a licensee; providing for licensing requirements and examinations; providing for licensure of persons licensed by other jurisdictions; providing for regulation of the use of explosives; granting rulemaking power to the Workers' Compensation Division; providing for discipline of licensees; and providing for civil and criminal penalties."

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. 1/4 FTE at Grade 7 will be required to complete the administrative details of issuing licenses, collecting fees, making follow-up billings, etc.
4. The boiler licensing and explosives licensing functions will be automated.

FISCAL IMPACT ON STATE SPECIAL REVENUE FUND:

	<u>FY 1986</u>	<u>FY 1987</u>
.25 FTE, grade 7	\$ 3,029	\$ 3,029
Employee Benefits	737	739
Total Personal Services	\$ 3,766	\$ 3,768
Operating Expenses	3,197	807
Equipment	5,000	-0-
TOTAL COSTS	\$11,963	\$ 4,575



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 20, 1985

FEES DEPOSITED INTO STATE SPECIAL REVENUE ACCOUNT:

	<u>FY 1986</u>	<u>FY 1987</u>
Application fee - 500/50 @ \$5	\$ 2,500	\$ 250
Examination fee - 500/50 @ \$5	2,500	250
Re-examination fee - 150/15 @ \$3	450	45
License fee - 500/50 @ \$15	7,500	750
License fee when applicant has been licensed by another state - 10/10 @ \$15	150	150
Renewal fee - 375 @ \$10	<u>-0-</u>	<u>3,750</u>
TOTAL FEES	\$13,100	\$ 5,195

The Division's ability to operate is contingent upon \$7,837 being added to its FY 1986 current level budget request for the boiler licensing functions's share of programming, maintenance, and purchase of a personal computer and printer, in addition to the costs listed above. The FTE cannot be absorbed with present staff if the boiler and explosives functions are not automated.

No General Fund Impact

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

1 SENATE BILL NO. 194
 2 INTRODUCED BY R. MANNING, DRISCOLL, LYBECK
 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 CERTAIN OTHER PURPOSES;
 7 PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER
 8 THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING
 9 REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF
 10 PERSONS LICENSED BY OTHER JURISDICTIONS; PROVIDING FOR
 11 REGULATION OF THE USE OF EXPLOSIVES; GRANTING RULEMAKING
 12 POWER TO THE WORKERS' COMPENSATION DIVISION; PROVIDING FOR
 13 DISCIPLINE OF LICENSEES; AND PROVIDING FOR CIVIL AND
 14 CRIMINAL PENALTIES."

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 licensed or under the supervision of a person
 21 licensed as a construction blaster by the workers'
 22 compensation division.

23 (2) For the purposes of [this act]:

24 (a) "construction blaster" means a person who engages
 25 in construction blasting;

1 (b) "construction blasting" means the use of
 2 explosives to:

3 (i) reduce, destroy, or weaken any residential,
 4 commercial, or other building; or

5 (ii) excavate any ditch, trench, cut, or hole or
 6 reduce, destroy, weaken, or cause a change in grade of any
 7 land formation in the construction of any building, highway,
 8 road, pipeline, sewerline, or electric or other utility
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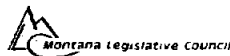
10 (c) "division" means the workers' compensation
 11 division of the department of labor and industry provided
 12 for in 2-15-1702;

13 (d) "explosive" has the meaning given in 50-38-101;

14 (e) "magazine" has the meaning given in 50-38-101.

15 (3) Nothing in [this act] applies to the private or
 16 commercial use of explosives by persons engaged in farming,
 17 ranching, logging, GEOPHYSICAL WORK, or mining of any kind
 18 or to the private use of explosives in the removal of stumps
 19 and rocks from land owned by the person using the
 20 explosives, except that the persons exempted from [this act]
 21 by this subsection must comply with rules adopted under
 22 [section 9(1)(c)] and the provisions of [section 12] apply
 23 to a violation of those rules by an exempted person.

24 (4) [This act] does not apply to persons conducting
 25 blasting operations when the persons and operations are



1 subject to rules adopted under and implementing
2 82-4-231(3)(e).

3 Section 2. General qualifications. A person making
4 initial application to the division for a license as a
5 construction blaster shall:

- 6 (1) pay an application fee to the division; and
- 7 (2) furnish proof under oath, on a form provided by
8 the division, that he:
 - 9 (a) is at least 18 years old;
 - 10 (b) is of good moral character;
 - 11 (c) has not been convicted of a felony or misdemeanor
12 involving the use of explosives;
 - 13 (d) is not addicted to narcotic drugs or intemperate
14 in the use of alcohol; and
 - 15 (e) has satisfied the requirements for training and
16 experience in construction blasting established by [section
17 3] and the rules of the division.

18 Section 3. Training and experience requirements. (1) A
19 person applying for licensure as a construction blaster
20 shall furnish proof, under oath, on a form provided by the
21 division, that he has:

- 22 (a) successfully completed a training program in
23 construction blasting that has been recognized by the
24 explosives or construction industry and approved by the
25 division; and

1 (b) at least 1 year of posttraining experience in
2 construction blasting and because of that experience is
3 familiar with the practical aspects of construction
4 blasting.

5 (2) No training program may be approved by the
6 division that does not offer comprehensive instruction in
7 types of explosives, methods and purposes of their use, and
8 safety and storage. The division shall by rule adopt a list
9 of approved training programs.

10 Section 4. Licensure by examination -- fee. (1) The
11 division shall, at least once a year, administer an
12 examination to applicants meeting the requirements of
13 [sections 2 and 3] and the rules adopted by the division.
14 The division shall determine the subjects, scope, and
15 acceptable level of performance for all examinations. The
16 examination may be written, oral, or both. The examination
17 shall at a minimum test the applicant's knowledge of the
18 rules of the division governing construction blasting.

19 (2) An applicant for licensure by examination shall
20 pay an examination fee to the division.

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

1 Section 5. Issuance of license -- fee. Upon receipt
2 of a license fee, the division shall issue a license to each
3 person who meets the requirements for licensure as
4 prescribed in [this act]. The license must include the
5 dates of issuance and expiration and a serial number. It
6 must be signed by the administrator of the division.

7 Section 6. Licensure of persons licensed by other
8 jurisdictions. Upon receipt of a license fee, the division
9 shall issue a license to any person fulfilling the
10 requirements of [section 2(2)(a) through (2)(d)] who holds a
11 certificate, license, or permit, issued by another state or
12 any agency of the United States, allowing him to supervise
13 or engage in the practice of construction blasting if the
14 division finds that the certificate, license, or permit was
15 issued upon the satisfactory completion of requirements
16 substantially equivalent to the requirements of [sections 2,
17 3, and 4].

18 Section 7. Annual renewal. (1) A license issued under
19 [this act] expires January 1 following the date of its
20 issuance or renewal and is invalid thereafter. The division
21 shall notify each person licensed under [this act] of the
22 date of the expiration of his license and the amount of his
23 renewal fee. The notice must be mailed to each licensed
24 construction blaster at his listed address at least 1 month
25 before the expiration of his license.

1 (2) Renewal may be made by application during the 60
2 days prior to the expiration date. Failure on the part of a
3 licensee to pay his renewal fee by the expiration date does
4 not deprive him of the right to renew his license, but the
5 fee must be increased 10% for each month or major portion
6 thereof that the payment of the renewal fee is delayed after
7 the expiration date. The maximum fee for delayed renewal may
8 not exceed twice the normal renewal fee. Application for
9 renewal following a lapse of 1 year or more is subject to
10 review by the division, and the applicant may be required to
11 successfully complete an examination.

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

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

18 Section 9. Rules for use of explosives -- variances.
19 (1) The division shall adopt rules governing the use of
20 explosives in construction blasting. The rules must include
21 provisions to:

- 22 (a) regulate the method of withdrawal of explosives
23 from the magazine in which they are kept;
24 (b) prevent the accidental detonation of explosives;
25 (c) prevent injury from blasting to persons and

1 property near blast sites;

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

4 (e) regulate the drilling of holes for explosives and
5 the loading and firing of explosives.

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

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

14 (b) the proposed variance from division rules will not
15 constitute a danger to property or public safety.

16 Section 10. General rulemaking power. The division
17 shall adopt rules to:

18 (1) implement the training and experience requirements
19 of [section 3];

20 (2) prescribe the amount of the fees provided for in
21 [sections 2, 4, and 5 through 7], which must be
22 nonrefundable, in an amount commensurate with the cost of
23 ~~the--respective--program--area~~ ADMINISTERING [THIS ACT], and
24 deposited in the state special revenue fund for the use of
25 the division;

1 (3) regulate the use of explosives and grant variances
2 under the provisions of [section 9], EXCEPT THAT, UNLESS THE
3 DIVISION IS MAKING AN INVESTIGATION UNDER [SECTION 11(2)],
4 THE DIVISION DOES NOT HAVE THE POWER UNDER [THIS ACT] TO
5 MAKE INSPECTIONS INTO CONSTRUCTION BLASTING AND MAY NOT
6 ADOPT RULES PROVIDING FOR SUCH INSPECTIONS OR FOR INSPECTORS
7 TO CARRY OUT SUCH INSPECTIONS;

8 (4) provide for the form of the license and pocket
9 card provided for in [section 8]; and

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

13 Section 11. Revocation, suspension, or refusal to
14 renew license -- grounds -- procedure. (1) The division
15 may reprimand or revoke, suspend, or refuse to renew the
16 license of a person found guilty of:

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

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

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

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

22 (2) A person may make charges under subsection (1)
23 against a licensee. The charges must be made by affidavit,
24 subscribed and sworn to by the person making them, and filed
25 with the division. The charges must be investigated by the

1 division. Unless the division, after investigation,
 2 dismisses the charges as unfounded or trivial, it shall
 3 within 6 months after the date on which the charges were
 4 made give notice by mail to the licensee of its intent to
 5 reprimand him or to revoke, suspend, or refuse to renew his
 6 license. The notice must contain those matters required by
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8 (3) The division may require a licensee to take a
 9 written or oral examination, or both, in a proceeding to
 10 reprimand or to revoke, suspend, or refuse to renew a
 11 license.

12 Section 12. Penalty -- injunction. (1) A person
 13 convicted of violating any provision of [this act] or the
 14 rules of the division is guilty of a misdemeanor and shall
 15 be imprisoned in the county jail for a term not to exceed 6
 16 months or fined an amount not to exceed \$500, or both.

17 (2) The district court may enjoin any violation or
 18 threatened violation of the requirements of [sections 1
 19 through 10] or the rules of the division as a nuisance per
 20 se; and the division, the attorney general, or any county
 21 attorney may institute proceedings for an injunction.

22 ~~NEW-SECTION:~~ Section 13. Application to existing
 23 licensees. Any person licensed as a construction blaster by
 24 any state or any agency of the United States on October 1,
 25 1985, who presents his license to the division before

1 January 1, 1986, must be issued a license to act as a
 2 construction blaster but is subject to the provisions of
 3 [sections 1 and 7 through 12].

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 194

3 Senate Labor and Employment Relations Committee

4
5 A statement of intent is required for this bill because
6 it requires the adoption of rules by the workers'
7 compensation division of the department of labor and
8 industry.

9 The legislature intends that the division adopt only
10 those rules required by sections 9 and 10 of this bill.

11 The rules adopted by the division to implement section
12 3 should require the submission of all training information
13 on an affidavit on which the applicant must either list the
14 name, place, and dates of attendance of a training school
15 approved by the division and published in its list of
16 approved schools or give sufficient information to allow the
17 division to judge the content and quality of the program.

18 Because of the highly dangerous nature of the business
19 regulated by this legislation, the legislature intends that
20 all persons, except those already holding licenses and
21 qualifying under the provisions of section 13, must comply
22 with section 2(2)(a) through (2)(d), whether applying for an
23 initial license by examination, reexamination under section
24 4(3), or licensure by other jurisdictions under section 6.
25 Fees for reexamination within 2 years of the initial

1 examination should be less than fees for the initial
2 examination because no training and experience information
3 need be reviewed and verified.

4 In developing rules on the use of explosives under
5 sections 9 and 10, it is intended that the division pay
6 particular attention to the publication entitled "Suggested
7 Code of Regulations", published by the institute of makers
8 of explosives (IME), in addition to any industry
9 recommendations or publications by other states.

10 Rules adopted under section 10(5) are intended to be
11 only such procedural rules as the division needs to receive
12 applications, act on variance requests, conduct revocation
13 hearings, and so forth.

1 SENATE BILL NO. 194
2 INTRODUCED BY R. MANNING, DRISCOLL, LYBECK
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 CERTAIN OTHER PURPOSES;
7 PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER
8 THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING
9 REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF
10 PERSONS LICENSED BY OTHER JURISDICTIONS; PROVIDING FOR
11 REGULATION OF THE USE OF EXPLOSIVES; GRANTING RULEMAKING
12 POWER TO THE WORKERS' COMPENSATION DIVISION; PROVIDING FOR
13 DISCIPLINE OF LICENSEES; AND PROVIDING FOR CIVIL AND
14 CRIMINAL PENALTIES."
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 licensed or under the supervision of a person
21 licensed as a construction blaster by the workers'
22 compensation division.
23 (2) For the purposes of [this act]:
24 (a) "construction blaster" means a person who engages
25 in construction blasting;

1 (b) "construction blasting" means the use of
2 explosives to:
3 (i) reduce, destroy, or weaken any residential,
4 commercial, or other building; or
5 (ii) excavate any ditch, trench, cut, or hole or
6 reduce, destroy, weaken, or cause a change in grade of any
7 land formation in the construction of any building, highway,
8 road, pipeline, sewerline, or electric or other utility
9 line;
10 (c) "division" means the workers' compensation
11 division of the department of labor and industry provided
12 for in 2-15-1702;
13 (d) "explosive" has the meaning given in 50-38-101;
14 (e) "magazine" has the meaning given in 50-38-101.
15 (3) Nothing in [this act] applies to the private or
16 commercial use of explosives by persons engaged in farming,
17 ranching, logging, GEOPHYSICAL WORK, or mining of any kind
18 or to the private use of explosives in the removal of stumps
19 and rocks from land owned by the person using the
20 explosives, except that the persons exempted from [this act]
21 by this subsection must comply with rules adopted under
22 [section 9(1)(c)] and the provisions of [section 12] apply
23 to a violation of those rules by an exempted person.
24 (4) [This act] does not apply to persons conducting
25 blasting operations when the persons and operations are

1 subject to rules adopted under and implementing
2 82-4-231(3)(e).

3 Section 2. General qualifications. A person making
4 initial application to the division for a license as a
5 construction blaster shall:

- 6 (1) pay an application fee to the division; and
7 (2) furnish proof under oath, on a form provided by
8 the division, that he:
- 9 (a) is at least 18 years old;
10 (b) is of good moral character;
11 (c) has not been convicted of a felony or misdemeanor
12 involving the use of explosives;
13 (d) is not addicted to narcotic drugs or intemperate
14 in the use of alcohol; and
15 (e) has satisfied the requirements for training and
16 experience in construction blasting established by [section
17 3] and the rules of the division.

18 Section 3. Training and experience requirements. (1) A
19 person applying for licensure as a construction blaster
20 shall furnish proof, under oath, on a form provided by the
21 division, that he has:

- 22 (a) successfully completed a training program in
23 construction blasting that has been recognized by the
24 explosives or construction industry and approved by the
25 division; and

1 (b) at least 1 year of posttraining experience in
2 construction blasting and because of that experience is
3 familiar with the practical aspects of construction
4 blasting.

5 (2) No training program may be approved by the
6 division that does not offer comprehensive instruction in
7 types of explosives, methods and purposes of their use, and
8 safety and storage. The division shall by rule adopt a list
9 of approved training programs.

10 Section 4. Licensure by examination -- fee. (1) The
11 division shall, at least once a year, administer an
12 examination to applicants meeting the requirements of
13 [sections 2 and 3] and the rules adopted by the division.
14 The division shall determine the subjects, scope, and
15 acceptable level of performance for all examinations. The
16 examination may be written, oral, or both. The examination
17 shall at a minimum test the applicant's knowledge of the
18 rules of the division governing construction blasting.

19 (2) An applicant for licensure by examination shall
20 pay an examination fee to the division.

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

1 Section 5. Issuance of license -- fee. Upon receipt
2 of a license fee, the division shall issue a license to each
3 person who meets the requirements for licensure as
4 prescribed in [this act]. The license must include the
5 dates of issuance and expiration and a serial number. It
6 must be signed by the administrator of the division.

7 Section 6. Licensure of persons licensed by other
8 jurisdictions. Upon receipt of a license fee, the division
9 shall issue a license to any person fulfilling the
10 requirements of [section 2(2)(a) through (2)(d)] who holds a
11 certificate, license, or permit, issued by another state or
12 any agency of the United States, allowing him to supervise
13 or engage in the practice of construction blasting if the
14 division finds that the certificate, license, or permit was
15 issued upon the satisfactory completion of requirements
16 substantially equivalent to the requirements of [sections 2,
17 3, and 4].

18 Section 7. Annual renewal. (1) A license issued under
19 [this act] expires January 1 following the date of its
20 issuance or renewal and is invalid thereafter. The division
21 shall notify each person licensed under [this act] of the
22 date of the expiration of his license and the amount of his
23 renewal fee. The notice must be mailed to each licensed
24 construction blaster at his listed address at least 1 month
25 before the expiration of his license.

1 (2) Renewal may be made by application during the 60
2 days prior to the expiration date. Failure on the part of a
3 licensee to pay his renewal fee by the expiration date does
4 not deprive him of the right to renew his license, but the
5 fee must be increased 10% for each month or major portion
6 thereof that the payment of the renewal fee is delayed after
7 the expiration date. The maximum fee for delayed renewal may
8 not exceed twice the normal renewal fee. Application for
9 renewal following a lapse of 1 year or more is subject to
10 review by the division, and the applicant may be required to
11 successfully complete an examination.

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

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

18 Section 9. Rules for use of explosives -- variances.
19 (1) The division shall adopt rules governing the use of
20 explosives in construction blasting. The rules must include
21 provisions to:

- 22 (a) regulate the method of withdrawal of explosives
23 from the magazine in which they are kept;
24 (b) prevent the accidental detonation of explosives;
25 (c) prevent injury from blasting to persons and

1 property near blast sites;

2 (d) provide for notification of blasting to the owners

3 or operators of gas and electric utilities; and

4 (e) regulate the drilling of holes for explosives and

5 the loading and firing of explosives.

6 (2) The division shall adopt rules providing for

7 variances from the rules required by subsection (1).

8 Variances may be granted by the division on a case-by-case

9 basis for the purpose of individual construction blasting

10 operations only if it is shown by the affidavit of a

11 construction blaster licensed under [this act] that:

12 (a) compliance with the rule for which a variance is

13 sought would be impracticable; and

14 (b) the proposed variance from division rules will not

15 constitute a danger to property or public safety.

16 Section 10. General rulemaking power. The division

17 shall adopt rules to:

18 (1) implement the training and experience requirements

19 of [section 3];

20 (2) prescribe the amount of the fees provided for in

21 [sections 2, 4, and 5 through 7], which must be

22 nonrefundable, in an amount commensurate with the cost of

23 ~~the--respective--program--area~~ ADMINISTERING [THIS ACT], and

24 deposited in the state special revenue fund for the use of

25 the division;

1 (3) regulate the use of explosives and grant variances

2 under the provisions of [section 9], EXCEPT THAT, UNLESS THE

3 DIVISION IS MAKING AN INVESTIGATION UNDER [SECTION 11(2)],

4 THE DIVISION DOES NOT HAVE THE POWER UNDER [THIS ACT] TO

5 MAKE INSPECTIONS INTO CONSTRUCTION BLASTING AND MAY NOT

6 ADOPT RULES PROVIDING FOR SUCH INSPECTIONS OR FOR INSPECTORS

7 TO CARRY OUT SUCH INSPECTIONS;

8 (4) provide for the form of the license and pocket

9 card provided for in [section 8]; and

10 (5) provide for the conduct of the business of the

11 division under [this act] and govern its proceedings under

12 [section 11].

13 Section 11. Revocation, suspension, or refusal to

14 renew license -- grounds -- procedure. (1) The division

15 may reprimand or revoke, suspend, or refuse to renew the

16 license of a person found guilty of:

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

18 (b) gross negligence, incompetency, or misconduct in

19 the practice of construction blasting;

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

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

22 (2) A person may make charges under subsection (1)

23 against a licensee. The charges must be made by affidavit,

24 subscribed and sworn to by the person making them, and filed

25 with the division. The charges must be investigated by the

1 division. Unless the division, after investigation,
 2 dismisses the charges as unfounded or trivial, it shall
 3 within 6 months after the date on which the charges were
 4 made give notice by mail to the licensee of its intent to
 5 reprimand him or to revoke, suspend, or refuse to renew his
 6 license. The notice must contain those matters required by
 7 the Montana Administrative Procedure Act.

8 (3) The division may require a licensee to take a
 9 written or oral examination, or both, in a proceeding to
 10 reprimand or to revoke, suspend, or refuse to renew a
 11 license.

12 Section 12. Penalty -- injunction. (1) A person
 13 convicted of violating any provision of [this act] or the
 14 rules of the division is guilty of a misdemeanor and shall
 15 be imprisoned in the county jail for a term not to exceed 6
 16 months or fined an amount not to exceed \$500, or both.

17 (2) The district court may enjoin any violation or
 18 threatened violation of the requirements of [sections 1
 19 through 10] or the rules of the division as a nuisance per
 20 se; and the division, the attorney general, or any county
 21 attorney may institute proceedings for an injunction.

22 ~~NEW-SECTION:~~ Section 13. Application to existing
 23 licensees. Any person licensed as a construction blaster by
 24 any state or any agency of the United States on October 1,
 25 1985, who presents his license to the division before

1 January 1, 1986, must be issued a license to act as a
 2 construction blaster but is subject to the provisions of
 3 [sections 1 and 7 through 12].

-End-

March 14

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 194

third reading copy (blue)
color

LICENSING THOSE WHO USE EXPLOSIVES IN CONSTRUCTION

Respectfully report as follows: That SENATE Bill No. 194

BE AMENDED AS FOLLOWS:

1. Page 6, line 23
Following: "the"
Insert: "construction"
2. Page 2, line 9, statement of Intent
Following: "states"
Insert: ", and that the division accept in satisfaction of the provisions of section 3 successful completion of training programs conducted by IME and explosives manufacturers such as ~~DuPont~~ ^{DALCON} and Atlas and other companies that have developed comprehensive training programs for the handling and use of explosives"

~~XXXXXX~~
AND AS AMENDED,
BE CONCURRED IN

Handwritten initials and date: 3/14

Handwritten signature: Rep. Robert Pavlovich
Rep. Robert Pavlovich, Chairman.

1 STATEMENT OF INTENT

2 SENATE BILL 194

3 Senate Labor and Employment Relations Committee

4
5 A statement of intent is required for this bill because
6 it requires the adoption of rules by the workers'
7 compensation division of the department of labor and
8 industry.

9 The legislature intends that the division adopt only
10 those rules required by sections 9 and 10 of this bill.

11 The rules adopted by the division to implement section
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16 approved schools or give sufficient information to allow the
17 division to judge the content and quality of the program.

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19 regulated by this legislation, the legislature intends that
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23 initial license by examination, reexamination under section
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25 Fees for reexamination within 2 years of the initial

1 examination should be less than fees for the initial
2 examination because no training and experience information
3 need be reviewed and verified.

4 In developing rules on the use of explosives under
5 sections 9 and 10, it is intended that the division pay
6 particular attention to the publication entitled "Suggested
7 Code of Regulations", published by the institute of makers
8 of explosives (IME), in addition to any industry
9 recommendations or publications by other states, AND THAT
10 THE DIVISION ACCEPT IN SATISFACTION OF THE PROVISIONS OF
11 SECTION 3 SUCCESSFUL COMPLETION OF TRAINING PROGRAMS
12 CONDUCTED BY IME AND EXPLOSIVES MANUFACTURERS SUCH AS DU
13 PONT AND ATLAS AND OTHER COMPANIES THAT HAVE DEVELOPED
14 COMPREHENSIVE TRAINING PROGRAMS FOR THE HANDLING AND USE OF
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2 INTRODUCED BY R. MANNING, DRISCOLL, LYBECK

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6 CONSTRUCTION OF BUILDINGS OR FOR CERTAIN OTHER PURPOSES;
7 PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER
8 THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING
9 REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF
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20 unless licensed or under the supervision of a person
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22 compensation division.

23 (2) For the purposes of [this act]:

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25 in construction blasting;

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4 commercial, or other building; or

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6 reduce, destroy, weaken, or cause a change in grade of any
7 land formation in the construction of any building, highway,
8 road, pipeline, sewerline, or electric or other utility
9 line;

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19 and rocks from land owned by the person using the
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4 initial application to the division for a license as a
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22 taken and failed the examination required by this section
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3 or operators of gas and electric utilities; and

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15 constitute a danger to property or public safety.

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22 nonrefundable, in an amount commensurate with the cost of
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24 deposited in the state special revenue fund for the use of
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3 DIVISION IS MAKING AN INVESTIGATION UNDER [SECTION 11(2)],
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6 ADOPT RULES PROVIDING FOR SUCH INSPECTIONS OR FOR INSPECTORS
7 TO CARRY OUT SUCH INSPECTIONS;

8 (4) provide for the form of the license and pocket
9 card provided for in [section 8]; and

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

13 Section 11. Revocation, suspension, or refusal to
14 renew license -- grounds -- procedure. (1) The division
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23 against a licensee. The charges must be made by affidavit,
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 6 license. The notice must contain those matters required by
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 9 written or oral examination, or both, in a proceeding to
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 11 license.

12 Section 12. Penalty -- injunction. (1) A person
 13 convicted of violating any provision of [this act] or the
 14 rules of the division is guilty of a misdemeanor and shall
 15 be imprisoned in the county jail for a term not to exceed 6
 16 months or fined an amount not to exceed \$500, or both.

17 (2) The district court may enjoin any violation or
 18 threatened violation of the requirements of [sections 1
 19 through 10] or the rules of the division as a nuisance per
 20 se; and the division, the attorney general, or any county
 21 attorney may institute proceedings for an injunction.

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 23 licensees. Any person licensed as a construction blaster by
 24 any state or any agency of the United States on October 1,
 25 1985, who presents his license to the division before

1 January 1, 1986, must be issued a license to act as a
 2 construction blaster but is subject to the provisions of
 3 [sections 1 and 7 through 12].

-End-

HOUSE

COMMITTEE OF THE WHOLE AMENDMENT

3181445p.cw

3-18-85
DATE

2:45
TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 194

reference reading copy (~~Salmon~~) as follows:
Color

- 1. Page 2, line 17.
Following: "WORK,"
Insert: "drilling or development of water, oil, or gas wells,"

KMC

ADOPT
 REJECT

Driscoll
Driscoll

STATEMENT OF INTENT

SENATE BILL 194

Senate Labor and Employment Relations Committee

A statement of intent is required for this bill because it requires the adoption of rules by the workers' compensation division of the department of labor and industry.

The legislature intends that the division adopt only those rules required by sections 9 and 10 of this bill.

The rules adopted by the division to implement section 3 should require the submission of all training information on an affidavit on which the applicant must either list the name, place, and dates of attendance of a training school approved by the division and published in its list of approved schools or give sufficient information to allow the division to judge the content and quality of the program.

Because of the highly dangerous nature of the business regulated by this legislation, the legislature intends that all persons, except those already holding licenses and qualifying under the provisions of section 13, must comply with section 2(2)(a) through (2)(d), whether applying for an initial license by examination, reexamination under section 4(3), or licensure by other jurisdictions under section 6. Fees for reexamination within 2 years of the initial

examination should be less than fees for the initial examination because no training and experience information need be reviewed and verified.

In developing rules on the use of explosives under sections 9 and 10, it is intended that the division pay particular attention to the publication entitled "Suggested Code of Regulations", published by the institute of makers of explosives (IME), in addition to any industry recommendations or publications by other states, AND THAT THE DIVISION ACCEPT IN SATISFACTION OF THE PROVISIONS OF SECTION 3 SUCCESSFUL COMPLETION OF TRAINING PROGRAMS CONDUCTED BY IME AND EXPLOSIVES MANUFACTURERS SUCH AS DU PONT AND ATLAS AND OTHER COMPANIES THAT HAVE DEVELOPED COMPREHENSIVE TRAINING PROGRAMS FOR THE HANDLING AND USE OF EXPLOSIVES.

Rules adopted under section 10(5) are intended to be only such procedural rules as the division needs to receive applications, act on variance requests, conduct revocation hearings, and so forth.

REFERENCE BILL

SECOND PRINTING

AS AMENDED



SENATE BILL NO. 194

INTRODUCED BY R. MANNING, DRISCOLL, LYBECK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSING OF PERSONS WHO USE EXPLOSIVES IN THE DEMOLITION OR CONSTRUCTION OF BUILDINGS OR FOR CERTAIN OTHER PURPOSES; PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF PERSONS LICENSED BY OTHER JURISDICTIONS; PROVIDING FOR REGULATION OF THE USE OF EXPLOSIVES; GRANTING RULEMAKING POWER TO THE WORKERS' COMPENSATION DIVISION; PROVIDING FOR DISCIPLINE OF LICENSEES; AND PROVIDING FOR CIVIL AND CRIMINAL PENALTIES."

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

Section 1. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of [this act]:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the workers' compensation division of the department of labor and industry provided for in 2-15-1702;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in [this act] applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, GEOPHYSICAL WORK, DRILLING OR DEVELOPMENT OF WATER, OIL, OR GAS WELLS, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from [this act] by this subsection must comply with rules adopted under [section 9(1)(c)] and the provisions of [section 12] apply to a violation of those rules by an exempted person.

(4) [This act] does not apply to persons conducting

1 blasting operations when the persons and operations are
2 subject to rules adopted under and implementing
3 82-4-231(3)(e).

4 Section 2. General qualifications. A person making
5 initial application to the division for a license as a
6 construction blaster shall:

- 7 (1) pay an application fee to the division; and
8 (2) furnish proof under oath, on a form provided by
9 the division, that he:
10 (a) is at least 18 years old;
11 (b) is of good moral character;
12 (c) has not been convicted of a felony or misdemeanor
13 involving the use of explosives;
14 (d) is not addicted to narcotic drugs or intemperate
15 in the use of alcohol; and
16 (e) has satisfied the requirements for training and
17 experience in construction blasting established by [section
18 3] and the rules of the division.

19 Section 3. Training and experience requirements. (1) A
20 person applying for licensure as a construction blaster
21 shall furnish proof, under oath, on a form provided by the
22 division, that he has:

- 23 (a) successfully completed a training program in
24 construction blasting that has been recognized by the
25 explosives or construction industry and approved by the

1 division; and

2 (b) at least 1 year of posttraining experience in
3 construction blasting and because of that experience is
4 familiar with the practical aspects of construction
5 blasting.

6 (2) No training program may be approved by the
7 division that does not offer comprehensive instruction in
8 types of explosives, methods and purposes of their use, and
9 safety and storage. The division shall by rule adopt a list
10 of approved training programs.

11 Section 4. Licensure by examination -- fee. (1) The
12 division shall, at least once a year, administer an
13 examination to applicants meeting the requirements of
14 [sections 2 and 3] and the rules adopted by the division.
15 The division shall determine the subjects, scope, and
16 acceptable level of performance for all examinations. The
17 examination may be written, oral, or both. The examination
18 shall at a minimum test the applicant's knowledge of the
19 rules of the division governing construction blasting.

20 (2) An applicant for licensure by examination shall
21 pay an examination fee to the division.

22 (3) An applicant for a license who has previously
23 taken and failed the examination required by this section
24 may retake it at any time within 2 years without again
25 furnishing proof of compliance with [section 3], upon

1 payment to the division of a reexamination fee.

2 Section 5. Issuance of license -- fee. Upon receipt
3 of a license fee, the division shall issue a license to each
4 person who meets the requirements for licensure as
5 prescribed in [this act]. The license must include the
6 dates of issuance and expiration and a serial number. It
7 must be signed by the administrator of the division.

8 Section 6. Licensure of persons licensed by other
9 jurisdictions. Upon receipt of a license fee, the division
10 shall issue a license to any person fulfilling the
11 requirements of [section 2(2)(a) through (2)(d)] who holds a
12 certificate, license, or permit, issued by another state or
13 any agency of the United States, allowing him to supervise
14 or engage in the practice of construction blasting if the
15 division finds that the certificate, license, or permit was
16 issued upon the satisfactory completion of requirements
17 substantially equivalent to the requirements of [sections 2,
18 3, and 4].

19 Section 7. Annual renewal. (1) A license issued under
20 [this act] expires January 1 following the date of its
21 issuance or renewal and is invalid thereafter. The division
22 shall notify each person licensed under [this act] of the
23 date of the expiration of his license and the amount of his
24 renewal fee. The notice must be mailed to each licensed
25 construction blaster at his listed address at least 1 month

1 before the expiration of his license.

2 (2) Renewal may be made by application during the 60
3 days prior to the expiration date. Failure on the part of a
4 licensee to pay his renewal fee by the expiration date does
5 not deprive him of the right to renew his license, but the
6 fee must be increased 10% for each month or major portion
7 thereof that the payment of the renewal fee is delayed after
8 the expiration date. The maximum fee for delayed renewal may
9 not exceed twice the normal renewal fee. Application for
10 renewal following a lapse of 1 year or more is subject to
11 review by the division, and the applicant may be required to
12 successfully complete an examination.

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

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

19 Section 9. Rules for use of explosives -- variances.
20 (1) The division shall adopt rules governing the use of
21 explosives in construction blasting. The rules must include
22 provisions to:

23 (a) regulate the method of withdrawal of explosives
24 from the CONSTRUCTION magazine in which they are kept;

25 (b) prevent the accidental detonation of explosives;

1 (c) prevent injury from blasting to persons and
2 property near blast sites;

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

5 (e) regulate the drilling of holes for explosives and
6 the loading and firing of explosives.

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

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

15 (b) the proposed variance from division rules will not
16 constitute a danger to property or public safety.

17 Section 10. General rulemaking power. The division
18 shall adopt rules to:

19 (1) implement the training and experience requirements
20 of [section 3];

21 (2) prescribe the amount of the fees provided for in
22 [sections 2, 4, and 5 through 7], which must be
23 nonrefundable, in an amount commensurate with the cost of
24 the--respective--program--area ADMINISTERING [THIS ACT], and
25 deposited in the state special revenue fund for the use of

1 the division;

2 (3) regulate the use of explosives and grant variances
3 under the provisions of [section 9], EXCEPT THAT, UNLESS THE
4 DIVISION IS MAKING AN INVESTIGATION UNDER [SECTION 11(2)],
5 THE DIVISION DOES NOT HAVE THE POWER UNDER [THIS ACT] TO
6 MAKE INSPECTIONS INTO CONSTRUCTION BLASTING AND MAY NOT
7 ADOPT RULES PROVIDING FOR SUCH INSPECTIONS OR FOR INSPECTORS
8 TO CARRY OUT SUCH INSPECTIONS;

9 (4) provide for the form of the license and pocket
10 card provided for in [section 8]; and

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

14 Section 11. Revocation, suspension, or refusal to
15 renew license -- grounds -- procedure. (1) The division
16 may reprimand or revoke, suspend, or refuse to renew the
17 license of a person found guilty of:

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

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

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

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

23 (2) A person may make charges under subsection (1)
24 against a licensee. The charges must be made by affidavit,
25 subscribed and sworn to by the person making them, and filed

1 with the division. The charges must be investigated by the
 2 division. Unless the division, after investigation,
 3 dismisses the charges as unfounded or trivial, it shall
 4 within 6 months after the date on which the charges were
 5 made give notice by mail to the licensee of its intent to
 6 reprimand him or to revoke, suspend, or refuse to renew his
 7 license. The notice must contain those matters required by
 8 the Montana Administrative Procedure Act.

9 (3) The division may require a licensee to take a
 10 written or oral examination, or both, in a proceeding to
 11 reprimand or to revoke, suspend, or refuse to renew a
 12 license.

13 Section 12. Penalty -- injunction. (1) A person
 14 convicted of violating any provision of [this act] or the
 15 rules of the division is guilty of a misdemeanor and shall
 16 be imprisoned in the county jail for a term not to exceed 6
 17 months or fined an amount not to exceed \$500, or both.

18 (2) The district court may enjoin any violation or
 19 threatened violation of the requirements of [sections 1
 20 through 10] or the rules of the division as a nuisance per
 21 se; and the division, the attorney general, or any county
 22 attorney may institute proceedings for an injunction.

23 ~~NEW-SECTION-~~ Section 13. Application to existing
 24 licensees. Any person licensed as a construction blaster by
 25 any state or any agency of the United States on October 1,

1 1985, who presents his license to the division before
 2 January 1, 1986, must be issued a license to act as a
 3 construction blaster but is subject to the provisions of
 4 [sections 1 and 7 through 12].

-End-