

SENATE BILL NO. 210

1/22 Introduced  
1/23 Referred to State Administration  
1/28 Fiscal Note Requested  
2/02 Fiscal Note Received  
2/06 Hearing  
2/18 Committee Report-Bill Pass As Amended  
2/20 2nd Reading Indefinitely Postponed

1 *Senate* BILL NO. *210*  
 2 INTRODUCED BY *Blaylock*  
 3 BY REQUEST OF THE GOVERNOR'S BUILDING CONSTRUCTION  
 4 ADVISORY COUNCIL

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAW RELATING TO PUBLIC CONTRACTORS; CREATING A BOARD OF  
 8 PUBLIC CONTRACTORS AUTHORIZED TO REGULATE AND LICENSE PUBLIC  
 9 CONTRACTORS; AMENDING SECTIONS 15-50-205, 15-50-206,  
 10 37-71-101, 37-71-104, 37-71-105, 37-71-201, 37-71-202,  
 11 37-71-211 THROUGH 37-71-213, 37-71-301, AND 37-71-302, MCA;  
 12 REPEALING SECTIONS 37-71-103 AND 37-71-204, MCA; AND  
 13 PROVIDING EFFECTIVE DATES."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Board of public contractors.

17 (1) There is a board of public contractors.

18 (2) The board consists of seven members appointed by  
 19 the governor with consent of the senate. The members must  
 20 have been residents of the state for not less than 5 years.  
 21 The members are:

- 22 (a) one engineering contractor as defined in [section
- 23 9];
- 24 (b) one building contractor as defined in [section 9];
- 25 (c) one electrical contractor;

- 1 (d) one mechanical contractor;
- 2 (e) one specialty contractor;
- 3 (f) two members of the public who are not engaged or
- 4 directly connected with the construction business.

5 (3) The members shall serve 4-year terms.

6 (4) All members, except the public members, must have  
 7 been engaged in their respective fields of contracting for a  
 8 minimum of 5 years prior to the date of their appointment.

9 (5) The board is allocated to the department of  
 10 commerce for administrative purposes only as prescribed in  
 11 2-15-121.

12 NEW SECTION. Section 2. Organization -- meetings --  
 13 compensation. (1) The board shall:

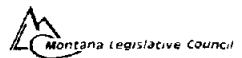
- 14 (a) elect a chairman from its membership; and
- 15 (b) hold at least two meetings annually and at such
- 16 other times as it considers necessary.

17 (2) Each member of the board shall receive  
 18 compensation and travel expenses as provided for in  
 19 37-1-133.

20 Section 3. Section 37-71-101, MCA, is amended to read:

21 "37-71-101. Definitions. The following words, terms,  
 22 and phrases in this chapter are, for the purposes hereof,  
 23 defined as follows:

- 24 (1) "Advertising" includes:
- 25 (a) the issuance of any sign, card, or device;



1 (b) the permitting or allowing of any sign or marking  
2 in any building or structure; or

3 (c) use of a newspaper, magazine, airway transmission,  
4 or directory under the listing of a contractor, with or  
5 without any limiting qualifications.

6 (2) "Board" means the board of public contractors  
7 provided for in [section 1].

8 ~~(1)~~(3) "Department", unless the context clearly  
9 indicates otherwise, means the department of commerce as  
10 provided in 2-15-1801.

11 ~~(2)~~(4) "Field of contracting" includes but is not  
12 limited to the distinct fields of general contracting,  
13 mechanical contracting, electrical contracting, and  
14 plumbing, heating, and air-conditioning contracting.

15 ~~(3)~~(5) "Gross receipts" means all receipts from  
16 sources within the state, whether in the form of money,  
17 credits, or other valuable consideration, received from,  
18 engaging in, or conducting a business, without deduction on  
19 account of the cost of the property sold, the cost of the  
20 materials used, labor or service cost, interest paid, taxes,  
21 losses, or any other expense whatsoever. However, gross  
22 receipts shall not include cash discounts allowed and taken  
23 on sales and sales refunds, either in cash or by credit,  
24 uncollectable accounts written off from time to time, or  
25 payments received in final liquidation of accounts included

1 in the gross receipts of any previous return made by the  
2 person.

3 (6) "Person" includes an individual, a firm, a  
4 partnership, a corporation, an association or other  
5 organization, or any combination thereof.

6 (7) "Public construction work" means:

7 (a) work done for a state or local government or any  
8 other public body, including the construction, alteration,  
9 repair, addition to, subtraction from, improvement of,  
10 moving, wrecking, or demolition of any:

11 (i) building;

12 (ii) highway or road;

13 (iii) railroad;

14 (iv) excavation; or

15 (v) other structure, project, development, or  
16 improvement; or

17 (b) the erection of scaffolding, other structures, or  
18 works in connection with any of the activities described in  
19 subsections (7)(a)(i) through (7)(a)(v).

20 ~~(4)~~(8) A "public ~~Public~~ contractor", within the  
21 meaning of this chapter, includes:

22 (a) any person who, in any capacity other than as the  
23 employee of another with wages as the sole compensation,  
24 undertakes, offers to undertake, purports to have the  
25 capacity to undertake, or submits a bid for public

1 construction work;

2 (b) any person who submits a proposal to or enters  
3 into a contract for performing public construction work in  
4 the state with the federal government or state of Montana,  
5 or with any board, commission, or department thereof, or  
6 with any board of county commissioners or any city or town  
7 council, or with any agency of any of them, or with any  
8 other public board, body, commission, or agency authorized  
9 to let or award contracts for any public work when the  
10 contract cost, value, or price thereof exceeds the sum of  
11 \$5,000-;

12 ~~(5) -- The term "public contractor" includes~~

13 (c) subcontractors undertaking to perform work within  
14 their field of contracting and within the limits of their  
15 class of license covered by the original contract or any  
16 part thereof, the contract cost, value, or price of which  
17 exceeds the sum of \$5,000-; or

18 (d) a construction manager who performs management and  
19 counseling services on a public construction project for a  
20 professional fee.

21 (9) "Responsible managing employee" means, in the case  
22 of a corporation, a corporate employee employed in a  
23 management capacity or, in the case of a partnership, a  
24 general unlimited partner who, when his principal or  
25 employer is actively engaged as a contractor, exercises and

1 is in a position to exercise authority in connection with  
2 his principal or employer's contracting business by:

3 (a) making technical and administrative decisions;

4 (b) hiring, superintending, promoting, transferring,  
5 laying off, disciplining, or discharging other employees and  
6 directing them, either by himself or through others, or  
7 effectively recommending such action on behalf of his  
8 principal or employer."

9 NEW SECTION. Section 4. Rules -- hearings --  
10 subpoenas -- cease and desist orders. The board may:

11 (1) adopt rules to implement this chapter;

12 (2) hold hearings in accordance with the Montana  
13 Administrative Procedure Act;

14 (3) compel the attendance of witnesses or the  
15 production of books and papers;

16 (4) whenever it appears to the board that any person  
17 has engaged or is about to engage in any act or practice  
18 constituting a violation of any provision of this chapter or  
19 any rule or order issued under this chapter, in the board's  
20 discretion:

21 (a) issue an order directing the person to cease and  
22 desist from continuing the act or practice after reasonable  
23 notice and opportunity for a hearing; the board may issue a  
24 temporary order pending the hearing which remains in effect  
25 until 10 days after any hearing is held or which becomes

1 final if the person to whom notice is addressed does not  
2 request a hearing within 15 days after receipt of the  
3 notice; or

4 (b) without the issuance of a cease and desist order,  
5 bring an action in any court of competent jurisdiction to  
6 enjoin such acts or practices and to enforce compliance with  
7 the provisions of this chapter or any rule or order issued  
8 under this chapter. Upon a proper showing, a permanent or  
9 temporary injunction, restraining order, or writ of mandamus  
10 must be granted and a receiver or conservator may be  
11 appointed for the defendant or the defendant's assets.

12 Section 5. Section 37-71-104, MCA, is amended to read:

13 "37-71-104. Records Offices -- records. (1) The  
14 department board may maintain offices in as many localities  
15 in the state as it finds necessary to carry out the  
16 provisions of this chapter. The board shall must maintain at  
17 Helena, Montana, open to public inspection during office  
18 hours, a complete indexed record of all applications and all  
19 licenses issued, and all certificates of renewal, and of  
20 cancellations all revocations or suspensions thereof and  
21 shall furnish a certified copy of any license issued, of  
22 renewal certificates, or of the cancellations records of  
23 revocations or suspensions thereof, upon receipt of the sum  
24 of \$17, and such A certified copy shall be received in all  
25 courts and elsewhere as prima facie evidence of the facts

1 stated therein.

2 (2) Credit reports, references, investigative  
3 memoranda, and financial information or data pertaining to a  
4 licensee's net worth are confidential and are not open to  
5 public inspection."

6 Section 6. Section 37-71-105, MCA, is amended to read:

7 "37-71-105. Disposal of fees. All--moneys--collected  
8 hereunder All fees collected by the board must be reasonably  
9 related to the respective program costs and shall must be  
10 deposited by the department with the state treasurer, who  
11 shall credit them to the general-fund-of-the state special  
12 revenue fund for the use of the board."

13 Section 7. Section 37-71-201, MCA, is amended to read:

14 "37-71-201. Unlawful to engage in public contracting  
15 business without license. It shall be unlawful for any  
16 person or any combination of persons to engage in the  
17 business or act in the capacity of public contractor as  
18 herein defined within the state of Montana without having a  
19 license therefor as herein provided. Evidence of the  
20 securing of any permit from a governmental agency or the  
21 employment of any person on a public construction project  
22 must be accepted by the board or any court of this state as  
23 prima facie evidence that the person securing such permit or  
24 employing any person on a public construction project is  
25 acting in the capacity of a public contractor under this

1 chapter."

2 Section 8. Section 37-71-202, MCA, is amended to read:

3 "37-71-202. Certain--small-or-federal-public-contracts  
4 exempt Exemptions. This chapter does not apply to:

5 (1) Nothing-herein-shall-require-any-contractor-to-pay  
6 any-license-fee-on any public contract project of a value  
7 less than \$5,000; nor-shall-any-contractor-be-required-to  
8 have-a-license--hereunder--in--order--to--submit--a--bid--or  
9 proposal--for--contracts-advertised-to-be-let-by-the-Montana  
10 highway-commission-where-federal-aid-is--obtained--from--the  
11 bureau--of--public-roads-or-the-department-of-agriculture-of  
12 the-United-States; neither--shall--a--successful--bidder--be  
13 required--to--be--licensed--as--provided--herein--before-the  
14 awarding-and-execution-of-any-contract--to--be--let--by--the  
15 state--highway--commission-where-federal-aid-from-the-bureau  
16 of-public-roads-or-the--department--of--agriculture--of--the  
17 United-States-is-involved.

18 (2) any contractor who contracts exclusively with the  
19 federal government, an instrumentality of the federal  
20 government, an Indian tribe, or a tribal member within the  
21 exterior boundaries of an Indian reservation;

22 (3) work done exclusively by an employee of the United  
23 States government, the state of Montana, or any town, city,  
24 county, school district, irrigation district, reclamation  
25 district, or other political subdivision of this state;

1 (4) officers of a court when they are acting within  
2 the scope of their office;

3 (5) work done exclusively by public utilities  
4 operating under the regulation of the public service  
5 commission on construction, maintenance, and development  
6 work incidental to their business;

7 (6) the sale or installation of any finished products,  
8 materials, or articles of merchandise that are not actually  
9 fabricated into and do not become a permanent, fixed part of  
10 the structure;

11 (7) registered architects or registered professional  
12 engineers;

13 (8) a person who merely furnishes materials or  
14 supplies without fabricating them into or consuming them in  
15 the performance of the work of a public contractor."

16 NEW SECTION. Section 9. Classification of licenses.

17 (1) For the purpose of classification, the contracting  
18 business includes:

19 (a) the general engineering contracting field. A  
20 general engineering contractor is a contractor whose  
21 principal contracting business is in connection with fixed  
22 works, including irrigation, drainage, water supply, water  
23 power, flood control, harbors, railroads, highways, tunnels,  
24 airports and airways, sewers and sewage disposal systems,  
25 bridges, inland waterways, pipelines for transmission of

1 petroleum and other liquid or gaseous substances,  
2 refineries, chemical plants and industrial plants, piers and  
3 foundations, and structures or work incidental thereto.

4 (b) the general building contracting field. A general  
5 building contractor is a contractor whose principal  
6 contracting business is in connection with any structure  
7 built, being built, or to be built for the support, shelter,  
8 and enclosure of persons, animals, personal property, or  
9 movable property of any kind, requiring in its construction  
10 the use of more than two unrelated building trades or  
11 crafts, or to do or superintend the whole or any part  
12 thereof.

13 (c) the specialty contracting field. A specialty  
14 contractor is a contractor whose operations as such are the  
15 performance of construction requiring special skill and  
16 whose principal contracting business involves the use of  
17 specialized building trades or crafts.

18 (2) General engineering contracting and general  
19 building contracting are mutually exclusive fields of  
20 contracting.

21 (3) This section does not prevent the board from  
22 establishing, broadening, limiting, or otherwise  
23 effectuating classifications in a manner consistent with  
24 established custom, usage, and procedure in the constructi  
25 business.

1 (4) The board may limit by rule the fields of public  
2 contracting and scope of the operations of a licensed  
3 contractor.

4 (5) The board is prohibited from establishing  
5 classifications in such a manner as to determine or limit  
6 craft jurisdictions.

7 Section 10. Section 37-71-211, MCA, is amended to  
8 read:

9 "37-71-211. Application for license -- contents --  
10 fees. (1) To obtain a license under this chapter, the  
11 applicant shall submit on such forms as the department board  
12 shall prescribe an application, under oath, which shall  
13 contain a statement of the applicant's experience and  
14 qualifications as a contractor; the value and character of  
15 contract work completed and for whom performed during 5  
16 years prior to the filing of such application; and a  
17 complete financial statement prepared by a certified public  
18 accountant on such forms and disclosing such information as  
19 shall be required by the department board. Such application  
20 shall also contain such other information as may be  
21 requested by the department board under such rules as may be  
22 adopted by the department board and which will assist the  
23 department board in determining the applicant's fitness to  
24 act in the capacity of a public contractor as defined in  
25 this chapter. Such application shall also contain a

1 statement that the applicant desires the issuance of a  
2 license under the terms of this chapter and shall specify  
3 the field fields of contracting ~~and--the--class--of--license~~  
4 licenses applied for.

5 (2) The application must be accompanied by a fee fixed  
6 by the board.

7 (3) If the holder of a license within a field of  
8 contracting applies for another license within a different  
9 field of contracting or a different classification within  
10 the same field of contracting, he shall pay an additional  
11 fee established by the board, which may not exceed 25% of  
12 the fee for the initial application for a license."

13 Section 11. Section 37-71-212, MCA, is amended to  
14 read:

15 "37-71-212. Investigation of applicant -- issuance of  
16 license. It shall be the duty of the department board to  
17 investigate and determine the applicant's fitness to act in  
18 the capacity of public contractor as defined in this  
19 chapter, and based on the following criteria:

20 (1) The board must require an applicant to show such a  
21 degree of experience, financial responsibility, and general  
22 knowledge of the building, safety, health, and lien laws of  
23 the state of Montana and the rudimentary principles of the  
24 contracting business as it considers necessary for the  
25 safety and protection of the public.

1 (2) An applicant may satisfy experience and knowledge  
2 requirements in the following ways:

3 (a) if an individual, he may qualify by personal  
4 appearance or by the appearance of his responsible managing  
5 employee; or

6 (b) if a partnership, corporation, or any other  
7 combination or organization, it may qualify by the  
8 appearance of the responsible managing employee of the firm.

9 (3) The individual qualifying on behalf of an  
10 individual or firm under subsection (2) must allege and  
11 prove that he is a responsible managing employee of such  
12 individual or firm.

13 (4) The board may, under reasonable rules adopted by  
14 it, investigate, classify, and qualify applicants for public  
15 contractors' licenses by written or oral examinations, or  
16 both. The board is authorized to issue public contractors'  
17 licenses to qualified applicants. The examinations may, in  
18 the discretion of the board, be given in specific  
19 classifications only.

20 (5) The financial responsibility of an applicant or a  
21 licensee must be established according to rules adopted by  
22 the board. The rules may include the following standards and  
23 criteria in connection with each applicant or public  
24 contractor and each associate or partner thereof:

25 (a) net worth;



1       (b) amount of liquid assets;  
 2       (c) prior payment and credit records;  
 3       (d) previous business experience;  
 4       (e) prior and pending lawsuits;  
 5       (f) prior and pending liens;  
 6       (g) adverse judgements;  
 7       (h) prior suspension or revocation of a contractor's  
 8 license in Montana or elsewhere;  
 9       (i) past and present business record of solvency; and  
 10       (j) information obtained from confidential financial  
 11 references and credit reports.

12       (6) If the applicant or contractor is a corporation,  
 13 its financial responsibility must be established  
 14 independently of and without reliance on the assets of its  
 15 officers, directors, or stockholders, but the financial  
 16 responsibility of its officers and directors may be inquired  
 17 into and considered as a criterion in determining the  
 18 corporation's financial responsibility. The board may  
 19 require an applicant or contractor to furnish a surety bond  
 20 or other security acceptable to the board, in an amount  
 21 fixed by the board.

22       (7) An applicant for a public contractor's license and  
 23 each officer, director, partner, and associate thereof must  
 24 possess good character. Lack of character may be established  
 25 by showing that the applicant or any officer, director,

1       partner, or associate thereof has:  
 2           (a) committed any act which, if committed by any  
 3 licensed public contractor, would be grounds for the  
 4 suspension or revocation of a public contractor's license;  
 5           (b) entered a plea of guilty to, been found guilty of,  
 6 or been convicted of a felony or crime involving moral  
 7 turpitude arising out of, in connection with, or related to  
 8 the activities of such person in such a manner as to  
 9 demonstrate his unfitness to act as a public contractor, and  
 10 the time for appeal has elapsed or the judgment of  
 11 conviction has been affirmed on appeal; or  
 12           (c) had a license revoked for reasons that would  
 13 preclude the granting of a license for which the application  
 14 has been made.

15       (8) no No license shall be issued to such an applicant  
 16 until the expiration of 10 days from and after the filing of  
 17 such application. The license so issued in pursuance of the  
 18 first application shall entitle the licensee to act as a  
 19 public contractor within this state, subject to the  
 20 limitations of such license, until the expiration of the  
 21 then-current calendar year."

22       NEW SECTION. Section 12. Power to waive certain  
 23 requirements. In a case in which an applicant has previously  
 24 been licensed in Montana or elsewhere as an individual, as a  
 25 member of a licensed partnership, or as an officer of a

1 corporation and the prior license has never been suspended  
2 or revoked and there is no disciplinary proceeding pending  
3 against the applicant or any licensee with whom he has been  
4 associated, the board may waive the requirement for written  
5 or oral examinations or information requested in the  
6 prescribed application form or any part thereof.

7 NEW SECTION. Section 13. Persons prohibited from  
8 serving as officers, directors, associates, or partners of  
9 licensee. (1) Any person is prohibited from serving as an  
10 officer, director, associate, or partner of a licensee who:

11 (a) has been denied a license or has had his license  
12 revoked or suspended or has been denied a renewal of a  
13 license; or

14 (b) has been a member, officer, director, or associate  
15 of any partnership, corporation, firm, or association whose  
16 application for a license has been denied or whose license  
17 has been revoked or suspended or which has been denied a  
18 renewal of a license and, while acting as such member,  
19 officer, director, or associate, had knowledge of or  
20 participated in any of the events leading to denial,  
21 revocation, or suspension.

22 (2) Any act or omission constituting a cause for  
23 disciplinary action against any partnership, corporation,  
24 firm, or association also constitutes a cause for  
25 disciplinary action against any licensee who is a member,

1 officer, director, or associate of such partnership,  
2 corporation, firm, or association and who participated in  
3 the prohibited act or omission.

4 NEW SECTION. Section 14. Cessation of association of  
5 responsible managing employee -- replacement. (1) If the  
6 individual qualifying on behalf of another individual or a  
7 firm pursuant to 37-71-212 ceases for any reason to be  
8 connected with the licensee, the licensee shall notify the  
9 board in writing within 30 days of such cessation of  
10 association or employment. If a notice is given, the license  
11 shall remain in force for a reasonable length of time to be  
12 set by the board, not to exceed 60 days from the date of  
13 such cessation of association or employment.

14 (2) The licensee shall replace the person originally  
15 qualified with another individual similarly qualified and  
16 approved by the board within the time limit prescribed by  
17 subsection (1), unless extended by the board for good cause.

18 (3) If the licensee fails to notify the board within  
19 the 30-day period, his license must be automatically  
20 suspended. The license must be reinstated upon the  
21 replacement of the person originally qualified by another  
22 individual similarly qualified and approved by the board.

23 Section 15. Section 37-71-213, MCA, is amended to  
24 read:

25 "37-71-213. Renewal -- waiting period after

1 ~~cancellation~~ revocation. (1) Any license issued under the  
 2 provisions of this chapter may be renewed for each  
 3 successive calendar year by obtaining from the department  
 4 board a certificate of renewal thereof. For the purpose of  
 5 obtaining such certificate of renewal, the licensee shall  
 6 file with the department board an application therefor,  
 7 stating the field of contracting and class of license  
 8 applied for and containing at least the same information as  
 9 that required in the application for the original license.  
 10 The application for such certificate of renewal must be made  
 11 to the department board on or before March 1 of each  
 12 successive calendar year, and such renewal certificate shall  
 13 be good for the then-current calendar year.

14 (2) At the time of filing the application for a  
 15 certificate of renewal, the applicant shall pay to the  
 16 department board a license fee ~~equal to 50% of the license~~  
 17 ~~fee for the original license~~ fixed by the board, provided  
 18 that if any applicant for a certificate of renewal shall  
 19 apply for a renewal under a different field ~~or class~~ from  
 20 the license theretofore issued to him, such new license  
 21 shall be issued only upon the same showing and under the  
 22 same terms and conditions and upon payment of the same fee  
 23 required for the issuance of an original license.

24 ~~(3) All certificates of renewal wherein the applicant~~  
 25 ~~does not apply for a change in the field or class of license~~

1 ~~shall be issued by the department to the applicant forthwith~~  
 2 ~~when the application is filed and the license renewal fee~~  
 3 ~~paid.~~

4 ~~(4)~~ (3) After cancellation revocation of a license,  
 5 such licensee shall may not be relicensed ~~during the current~~  
 6 ~~calendar year in which the offense was committed~~ within 6  
 7 months of the date on which the license was revoked."

8 Section 16. Section 37-71-301, MCA, is amended to  
 9 read:

10 "37-71-301. Complaints against licensee -- grounds --  
 11 investigation -- hearing -- suspension of license --  
 12 appeals. (1) Any person or other organization may file a  
 13 duly verified complaint with the department board charging  
 14 that the licensee is guilty of one or more of the following  
 15 acts or omissions:

16 (a) abandonment of any contract or failure to complete  
 17 or to prosecute diligently construction projects for the  
 18 stated price, including modifications, without legal excuse;

19 (b) diversion of funds or property received under  
 20 express agreement for prosecution or completion of a  
 21 specific contract under this chapter or for a specific  
 22 purpose in the prosecution or completion of any contract and  
 23 their application or use for any other contract, obligation,  
 24 or purpose with intent to defraud or deceive creditors or  
 25 the owner;

1 (c) the doing of any willful fraudulent act by the  
2 licensee as a public contractor in consequence of which  
3 another is substantially injured;

4 (d) the making of any false statement in any  
5 application for a license or renewal thereof;

6 (e) the failure to comply with the provisions of  
7 18-1-112 requiring preference of products manufactured or  
8 produced in this state by Montana industry and labor;

9 (f) willful and prejudicial departure from or  
10 disregard of plans or specifications in any material respect  
11 without the consent of the owner, his duly authorized  
12 representative, or the person entitled to have the  
13 particular construction project or operation completed in  
14 accordance with the plans and specifications;

15 (g) willful failure or refusal, without legal excuse,  
16 on the part of a licensee to comply with the terms of a  
17 construction contract or written warranty, thereby causing  
18 material injury to another;

19 (h) willful or deliberate disregard and violation of:

20 (i) the building laws of the state or any political  
21 subdivision thereof; or

22 (ii) the safety laws or labor laws of the state;

23 (i) willful or deliberate failure by any licensee or  
24 agent or officer thereof to pay any money when due for  
25 materials or services rendered in connection with his

1 operations as a public contractor, when he has the capacity  
2 to pay or has received sufficient funds therefor as payment  
3 for the particular construction work, project, or operation  
4 for which the services or materials were rendered or  
5 purchased, or the false denial of any such amount due or the  
6 validity of the claim thereof with intent to secure a  
7 discount upon such indebtedness or with intent to injure,  
8 delay, or defraud the person to whom such indebtedness is  
9 due;

10 (j) failure to establish financial responsibility in  
11 the manner provided in 37-71-212 at the time of renewal of  
12 the license or at any other time required by the board;

13 (k) acting in the capacity of a public contractor  
14 under any license except:

15 (i) in the name of the licensee as set forth upon the  
16 license; or

17 (ii) as an employee of the licensee as set forth in the  
18 application for such license or as later changed pursuant to  
19 this chapter and the rules of the board;

20 (l) intentionally evading the provisions of this  
21 chapter by:

22 (i) aiding or abetting an unlicensed person to evade  
23 the provisions of this chapter;

24 (ii) combining or conspiring with an unlicensed person  
25 to perform an unauthorized act;

1 (iii) allowing a license to be used by an unlicensed  
2 person;

3 (iv) acting as agent, partner, or associate of an  
4 unlicensed person; or

5 (v) furnishing estimates or bids to an unlicensed  
6 person;

7 (m) any attempt by a licensee to assign, transfer, or  
8 otherwise dispose of a license or permit the unauthorized  
9 use thereof;

10 (n) workmanship which is not commensurate with  
11 standards of the trade in general or which is below building  
12 or construction codes adopted by the city or county in which  
13 the work is performed. If no applicable building or  
14 construction code has been adopted locally, then workmanship  
15 must meet the standards determined by the latest edition of  
16 the Uniform Building Code, Uniform Plumbing Code, or  
17 National Electrical Code adopted by the state.

18 (o) acting in the capacity of a contractor beyond the  
19 scope of the license;

20 (p) bidding to contract or contracting for a sum for a  
21 construction contract or project in excess of the limit  
22 placed on the license by the board;

23 (q) knowingly entering into a contract with a  
24 contractor while that contractor is not licensed or bidding  
25 a contract or entering into a contract with a contractor for

1 work in excess of his limit or beyond the scope of his  
2 license;

3 (r) advertising as a public contractor without a valid  
4 license in the appropriate classification established by  
5 (section 9). Advertising must include the contractor's  
6 license number, and failure to do so is grounds for a  
7 complaint under this section.

8 (s) failure in any material respect to comply with the  
9 provisions of this chapter or the rules of the board.

10 (2) Upon the filing of such complaint, the department  
11 board shall investigate the charge and within 60 days after  
12 the filing of such complaint render and file a preliminary  
13 decision, with the reasons therefor. If the department's  
14 board's preliminary decision be that the licensee has been  
15 guilty of any of such acts or omissions, the department  
16 board shall ~~suspend~~ may take disciplinary action against the  
17 contractor's license in accordance with 37-71-302. At any  
18 time within 20 days thereafter, the complainant or the  
19 contractor may petition the department board for a rehearing  
20 contested case hearing in accordance with the Montana  
21 Administrative Procedure Act. ~~In the order granting or~~  
22 ~~denying such rehearing, the department shall set forth a~~  
23 ~~statement of the particular grounds and reasons for the~~  
24 ~~department's actions on such petition and shall mail a copy~~  
25 ~~of such order to the parties who have appeared in support of~~

1 or--in--opposition--to--the--petition--for--rehearing;--if-a  
 2 rehearing-be-granted;--the-department-shall--set--the--matter  
 3 for-further-hearing-on-due-notice-to-the-parties-and;--within  
 4 30---days---after---submission--of--the--matter;--serve--the  
 5 department's-decision-after-rehearing-in-like-manner--as--an  
 6 original-decision;

7 (3)--The--filing--of--such-petition-for-rehearing-as-to  
 8 the-department's-actions-in--suspending--or--canceling--such  
 9 license--shall--suspend--the--operation--of--such-action-and  
 10 permit-the-licensee-to-continue-to-do-business-as--a--public  
 11 contractor--pending--final-determination-of-the-controversy;

12 (4)--Within-30-days-after-the--decision--on--rehearing;  
 13 any--party--aggrieved-by-such-decision-of-the-department-may  
 14 appeal-therefrom-to-the-district-court-in-and-for-the-county  
 15 in-which-the-licensee-under-this--chapter--resides--or--does  
 16 business---as--a--public--contractor--by--serving--upon--the  
 17 department--a--notice--of--such--appeal;--The--matter--shall  
 18 thereupon--be--heard--de-novo--by--the--district--court;--An--appeal  
 19 may-be-taken-from-the-decision-of-the-district-court-in--the  
 20 same-manner-as-appeals-in-other-civil-cases;

21 (5)--In--all--cases--where--the--licensee-has-filed-his  
 22 notice-of-appeal-from-the-decision-of-the-department-or-from  
 23 the-decision-of-the-district-court;--such-licensee--shall--be  
 24 entitled--to--continue-to-do-business-as-a-public-contractor  
 25 pending-final-decision-of-the-controversy;"

1 Section 17. Section 37-71-302, MCA, is amended to  
 2 read:

3 "37-71-302. Penalties Violations -- discipline --  
 4 penalties. (1) Any person or other organization acting in  
 5 the capacity of public contractor within the meaning of this  
 6 chapter without a license as herein provided shall be guilty  
 7 of a misdemeanor and shall upon conviction thereof, if an  
 8 individual, be punished by a fine of not to exceed \$500 or  
 9 by imprisonment in the county jail for a term not to exceed  
 10 6 months or by both such fine and imprisonment, in the  
 11 discretion of the court. The same penalties shall apply  
 12 upon conviction to any member of a partnership or to any  
 13 construction, managing, or directing officer of any  
 14 corporation or other organization consenting to,  
 15 participating in, or aiding or abetting any such violation  
 16 of this chapter.

17 (2) No license may be used for any purpose by any  
 18 person other than the person to whom such license is issued,  
 19 and no license may be assigned, transferred, or otherwise  
 20 disposed of to permit the unauthorized use thereof. The  
 21 license of any person who violates any provision of this  
 22 section shall be automatically canceled and revoked.

23 (3) The board may suspend or revoke a license, refuse  
 24 renewal of a license, impose limits on the field, scope, and  
 25 monetary limit of a license, or reprimand or take other less

1 severe disciplinary action, including requiring or  
2 increasing the amount of the surety bond or cash deposit of  
3 the licensee, if the licensee commits any act which  
4 constitutes a cause for disciplinary action.

5 (4) No person engaged in the business or acting in the  
6 capacity of a public contractor may bring or maintain any  
7 action in the courts of this state for the collection of  
8 compensation for the performance of any act or contract for  
9 which a license is required by this chapter without alleging  
10 and proving that he was a duly licensed contractor when the  
11 job was bid and during the performance of such act or  
12 contract.

13 (5) Any person convicted of acting as a public  
14 contractor without a license may be disqualified from taking  
15 a written or oral examination for a contractor's license for  
16 a period of 6 months from the date of his conviction.

17 ~~(2)~~(6) A person failing to file a contractor's license  
18 return as provided and required by the department of  
19 revenue, ~~--upon--conviction,~~ shall, upon conviction, be fined  
20 not less than \$1,000 or more than \$10,000."

21 Section 18. Section 15-50-205, MCA, is amended to  
22 read:

23 "15-50-205. Additional license tax imposed. (1) In  
24 addition to the fees enumerated in ~~37-71-204~~ Title 37,  
25 chapter 71, each public contractor shall pay to the

1 department of revenue an additional license fee in a sum  
2 equal to 1% of the gross receipts, as defined in 37-71-101,  
3 from public contracts during the income year for which the  
4 license is issued.

5 (2) The additional license fee shall be computed upon  
6 the basis of the entire contract for each separate contract  
7 let by any of the public bodies as specified in  
8 37-71-101~~(4)~~."

9 Section 19. Section 15-50-206, MCA, is amended to  
10 read:

11 "15-50-206. Withholding license fee from payments --  
12 refunds. (1) The prime contractor shall withhold the  
13 additional 1% license fee from payments to his  
14 subcontractors and inform the department of revenue on  
15 prescribed forms of the amount of the additional 1% license  
16 fee in his account to be allocated and transferred to the  
17 subcontractor. The notification to transfer portions of the  
18 additional 1% license fee must be filed within 30 days after  
19 each payment is made to subcontractors. If any prime  
20 contractor fails to file the required allocation and  
21 transfer report at the time required by or under the  
22 provisions of this chapter, a penalty computed at the rate  
23 of 10% of the additional 1% license fee withheld from  
24 subcontractors shall be due from the prime contractor.

25 (2) The state, county, city, or any agency or

1 department thereof, as described in 37-71-101~~(4)~~, for whom  
 2 the contractor is performing public work shall withhold, in  
 3 addition to other amounts withheld as provided by law, 1% of  
 4 all payments due the contractor and shall transmit such  
 5 moneys to the department of revenue. In the event that the  
 6 1% of gross receipts, as defined in 37-71-101, is not  
 7 withheld as provided, the contractor shall make payment of  
 8 these amounts to the department within 30 days after the  
 9 date on which the contractor receives each increment of  
 10 payment for work performed by the contractor.

11 (3) Any overpayment of the 1% of gross receipts, as  
 12 defined in 37-71-101, withheld or paid by any contractor  
 13 hereunder shall be refunded by the department of revenue at  
 14 the end of the income year upon written application  
 15 therefor."

16 NEW SECTION. Section 20. Repealer. Sections 37-71-103  
 17 and 37-71-204, MCA, are repealed.

18 NEW SECTION. Section 21. Extension of authority. Any  
 19 existing authority of the department of commerce to make  
 20 rules on the subject of the provisions of this act is  
 21 extended to the provisions of this act.

22 NEW SECTION. Section 22. Codification instruction.  
 23 (1) Section 1 is intended to be codified as an integral  
 24 part of Title 2, chapter 15, part 18, and the provisions of  
 25 Title 2, chapter 15, part 18, apply to section 1.

1 (2) Sections 2, 4, 9, and 12 through 14 are intended  
 2 to be codified as an integral part of Title 37, chapter 71,  
 3 and the provisions of Title 37, chapter 71, apply to  
 4 sections 2, 4, 9, and 12 through 14.

5 NEW SECTION. Section 23. Severability. If a part of  
 6 this act is invalid, all valid parts that are severable from  
 7 the invalid part remain in effect. If a part of this act is  
 8 invalid in one or more of its applications, the part remains  
 9 in effect in all valid applications that are severable from  
 10 the invalid applications.

11 NEW SECTION. Section 24. Effective date. (1) Except  
 12 as provided in subsection (2), this act is effective January  
 13 1, 1986.

14 (2) Section 4 and this section are effective on  
 15 passage and approval, but rules adopted pursuant to section  
 16 4 may not be effective prior to January 1, 1986.

-End-



## STATE OF MONTANA

## FISCAL NOTE

REQUEST NO. FNN 248-85Form BD-15

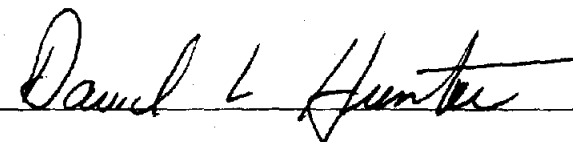
In compliance with a written request received January 29, 19 85, there is hereby submitted a Fiscal Note for S.B. 210 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Revising laws relating to public contractors and creating a Board of Public Contractors authorized to regulate and license public contractors.

ASSUMPTIONS:

1. \$275,000 estimated from 2,043 licensees in FY 85 to continue in FY 86-87
2. 7 members attend 2 meetings a year = 28 meeting days
3. Applies only to public contractors, not private contractors
4. 40 pages rules at \$14.00 a page
5. 60 hours legal at \$40 an hour per year
6. 1.00 clerical FTE in FY 86, 2.00 FTE (Grade 11, step 2) in FY 87 plus 18½% benefits (additional FTE is an inspector in FY 87)
7. Equipment required (electronic automated typewriter, file cabinets)
8. Exam costs \$500 per year
9. Indirect costs, rent, equipment repair, other expenses at \$6400 in FY 86, \$2,150 in FY 87
10. Assume automated licensing system implementation under board
11. Assume an internal departmental loan will be used to cover start-up costs.



BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Feb 2, 1985

SB 210

FISCAL IMPACT:

Fiscal Impact on General Fund

Revenues:

	<u>FY 1986</u>	<u>FY 1987</u>	<u>Biennium</u>
Revenue deposited			
In General Fund: Current	\$ 275,000	\$ 275,000	\$550,000
Proposed	-0-	-0-	-0-
Impact on General Fund:	<u>(\$ 275,00)</u>	<u>(\$ 275,000)</u>	<u>(\$550,000)</u>

Expenditures:

	<u>FY 1986</u>		<u>FY 1987</u>		<u>Biennium</u>
	General Fund Cost	State Special Cost	General Fund Cost	State Special Cost	
Current	\$ 32,564	-0-	\$ 32,010	-0-	\$ 64,574
Proposed	-0-	\$ 33,672	-0-	\$69,274	\$102,946
Net increased cost of program					\$ 38,372

NET IMPACT ON GENERAL FUND:

	<u>FY 1986</u>	<u>FY 1987</u>	<u>Biennium</u>
Reduced Costs:	\$ 32,564	\$ 32,010	
Reduced Revenue:	<u>(\$275,000)</u>	<u>(\$275,000)</u>	
Net Impact	<u>(\$242,436)</u>	<u>(\$242,990)</u>	<u>(\$485,426)</u>

NOTE:

This bill requires that fees be deposited into a state special revenue account and be set at a rate commensurate with the costs of the program. This will result in public contractors paying \$430,000 less in license fees over the biennium.

APPROVED BY COMMITTEE  
ON STATE ADMINISTRATION

1                               SENATE BILL NO. 210  
2           INTRODUCED BY BLAYLOCK, BOYLAN, DRISCOLL, QUILICI  
3           BY REQUEST OF THE GOVERNOR'S BUILDING CONSTRUCTION  
4                               ADVISORY COUNCIL  
5  
6   A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7   LAW RELATING TO PUBLIC CONTRACTORS; CREATING A BOARD OF  
8   PUBLIC CONTRACTORS AUTHORIZED TO REGULATE AND LICENSE PUBLIC  
9   CONTRACTORS; AMENDING SECTIONS 15-50-205, 15-50-206,  
10  37-71-101, 37-71-104, 37-71-105, 37-71-201, 37-71-202,  
11  37-71-211 THROUGH 37-71-213, 37-71-301, AND 37-71-302, MCA;  
12  REPEALING SECTIONS 37-71-103 AND 37-71-204, MCA; AND  
13  PROVIDING EFFECTIVE DATES."  
14  
15  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
16       NEW SECTION. Section 1. Board of public contractors.  
17  (1) There is a board of public contractors.  
18       (2) The board consists of seven members appointed by  
19  the governor with consent of the senate. The members must  
20  have been residents of the state for not less than 5 years.  
21  The members are:  
22       (a) one engineering contractor as defined in [section  
23  9];  
24       (b) one building contractor as defined in [section 9];  
25       (c) one ~~electrical~~ contractor JOURNEYMAN FROM THE

1       BUILDING TRADES;  
2           (d) one mechanical contractor;  
3           (e) one specialty contractor;  
4           (f) two members of the public who are not engaged or  
5       directly connected with the construction business.  
6           (3) The members shall serve 4-year terms.  
7           (4) All members, except the public members, must have  
8       been engaged in their respective fields of contracting for a  
9       minimum of 5 years prior to the date of their appointment.  
10          (5) The board is allocated to the department of  
11  commerce for administrative purposes only as prescribed in  
12  2-15-121.  
13       NEW SECTION. Section 2. Organization -- meetings --  
14  compensation. (1) The board shall:  
15           (a) elect a chairman from its membership; and  
16           (b) hold at least two meetings annually and at such  
17  other times as it considers necessary.  
18          (2) Each member of the board shall receive  
19  compensation and travel expenses as provided for in  
20  37-1-133.  
21       Section 3. Section 37-71-101, MCA, is amended to read:  
22       "37-71-101. Definitions. The following words, terms,  
23  and phrases in this chapter are, for the purposes hereof,  
24  defined as follows:  
25       (1) "Advertising" includes:

**SECOND READING**

1        (a) the issuance of any sign, card, or device;  
 2        (b) the permitting or allowing of any sign or marking  
 3 in any building or structure; or  
 4        (c) use of a newspaper, magazine, airway transmission,  
 5 or directory under the listing of a contractor, with or  
 6 without any limiting qualifications.

7        (2) "Board" means the board of public contractors  
 8 provided for in [section 1].

9        ~~††~~(3) "Department", unless the context clearly  
 10 indicates otherwise, means the department of commerce as  
 11 provided in 2-15-1801.

12        ~~††~~(4) "Field of contracting" includes but is not  
 13 limited to the distinct fields of general contracting,  
 14 mechanical contracting, electrical contracting, and  
 15 plumbing, heating, and air-conditioning contracting.

16        ~~††~~(5) "Gross receipts" means all receipts from  
 17 sources within the state, whether in the form of money,  
 18 credits, or other valuable consideration, received from,  
 19 engaging in, or conducting a business, without deduction on  
 20 account of the cost of the property sold, the cost of the  
 21 materials used, labor or service cost, interest paid, taxes,  
 22 losses, or any other expense whatsoever. However, gross  
 23 receipts shall not include cash discounts allowed and taken  
 24 on sales and sales refunds, either in cash or by credit,  
 25 uncollectable accounts written off from time to time, or

1        payments received in final liquidation of accounts included  
 2 in the gross receipts of any previous return made by the  
 3 person.

4        (6) "Person" includes an individual, a firm, a  
 5 partnership, a corporation, an association or other  
 6 organization, or any combination thereof.

7        (7) "Public construction work" means:

8        (a) work done for a state or local government or any  
 9 other public body, including the construction, alteration,  
 10 repair, addition to, subtraction from, improvement of,  
 11 moving, wrecking, or demolition of any:

12        (i) building;  
 13        (ii) highway or road, UNLESS IT IS FINANCED ENTIRELY OR  
 14 IN PART WITH FEDERAL FUNDS;

15        ~~††††~~~~railroad;~~  
 16        ~~†††~~(III) excavation; or  
 17        ~~††~~(IV) other structure, project, development, or  
 18 improvement; or

19        (b) the erection of scaffolding, other structures, or  
 20 works in connection with any of the activities described in  
 21 subsections (7)(a)(i) through ~~††~~~~†††~~ (7)(A)(IV).

22        ~~††~~(8) A "public Public contractor", within the  
 23 meaning of this chapter, includes:  
 24        (a) any person who, in any capacity other than as the  
 25 employee of another with wages as the sole compensation,

1 undertakes, offers to undertake, purports to have the  
 2 capacity to undertake, or submits a bid for public  
 3 construction work;

4 (b) any person who submits a proposal to or enters  
 5 into a contract for performing public construction work in  
 6 the state with the federal government or state of Montana,  
 7 or with any board, commission, or department thereof, or  
 8 with any board of county commissioners or any city or town  
 9 council, or with any agency of any of them, or with any  
 10 other public board, body, commission, or agency authorized  
 11 to let or award contracts for any public work when the  
 12 contract cost, value, or price thereof exceeds the sum of  
 13 \$5,000+;

14 ~~(5) -- The term "public contractor" includes~~

15 (c) subcontractors undertaking to perform work within  
 16 their field of contracting and within the limits of their  
 17 class of license covered by the original contract or any  
 18 part thereof, the contract cost, value, or price of which  
 19 exceeds the sum of \$5,000+; or

20 (d) a construction manager who performs management and  
 21 counseling services on a public construction project for a  
 22 professional fee.

23 (9) "Responsible managing employee" means, in the case  
 24 of a corporation, a corporate employee employed in a  
 25 management capacity or, in the case of a partnership, a

1 general unlimited partner who, when his principal or  
 2 employer is actively engaged as a contractor, exercises and  
 3 is in a position to exercise authority in connection with  
 4 his principal or employer's contracting business by:

5 (a) making technical and administrative decisions;

6 (b) hiring, superintending, promoting, transferring,  
 7 laying off, disciplining, or discharging other employees and  
 8 directing them, either by himself or through others, or  
 9 effectively recommending such action on behalf of his  
 10 principal or employer."

11 NEW SECTION. Section 4. Rules -- hearings --  
 12 subpoenas -- cease and desist orders. The board may:  
 13 (1) adopt rules to implement this chapter;  
 14 (2) hold hearings in accordance with the Montana  
 15 Administrative Procedure Act;

16 (3) compel the attendance of witnesses or the  
 17 production of books and papers;

18 (4) whenever it appears to the board that any person  
 19 has engaged or is about to engage in any act or practice  
 20 constituting a violation of any provision of this chapter or  
 21 any rule or order issued under this chapter, in the board's  
 22 discretion:

23 (a) issue an order directing the person to cease and  
 24 desist from continuing the act or practice after reasonable  
 25 notice and opportunity for a hearing; the board may issue a

1 temporary order pending the hearing which remains in effect  
 2 until 10 days after any hearing is held or which becomes  
 3 final if the person to whom notice is addressed does not  
 4 request a hearing within 15 days after receipt of the  
 5 notice; or

6 (b) without the issuance of a cease and desist order,  
 7 bring an action in any court of competent jurisdiction to  
 8 enjoin such acts or practices and to enforce compliance with  
 9 the provisions of this chapter or any rule or order issued  
 10 under this chapter. Upon a proper showing, a permanent or  
 11 temporary injunction, restraining order, or writ of mandamus  
 12 must be granted and a receiver or conservator may be  
 13 appointed for the defendant or the defendant's assets.

14 Section 5. Section 37-71-104, MCA, is amended to read:

15 "37-71-104. Records Offices -- records. (1) The  
 16 department board may maintain offices in as many localities  
 17 in the state as it finds necessary to carry out the  
 18 provisions of this chapter. The board shall must maintain at  
 19 Helena, Montana, open to public inspection during office  
 20 hours, a complete indexed record of all applications and all  
 21 licenses issued, and all certificates of renewal, and of  
 22 cancellations all revocations or suspensions thereof and  
 23 shall furnish a certified copy of any license issued, of  
 24 renewal certificates, or of the cancellations records of  
 25 revocations or suspensions thereof, upon receipt of the sum

1 of \$17. ~~and such~~ A certified copy shall be received in all  
 2 courts and elsewhere as prima facie evidence of the facts  
 3 stated therein.

4 (2) Credit reports, references, investigative  
 5 memoranda, and financial information or data pertaining to a  
 6 licensee's net worth are confidential and are not open to  
 7 public inspection."

8 Section 6. Section 37-71-105, MCA, is amended to read:

9 "37-71-105. Disposal of fees. ~~All moneys collected~~  
 10 hereunder All fees collected by the board must be reasonably  
 11 related to the respective program costs and shall must be  
 12 deposited by the department with the state treasurer, who  
 13 shall credit them to the general-fund-of-the state special  
 14 revenue fund for the use of the board."

15 Section 7. Section 37-71-201, MCA, is amended to read:

16 "37-71-201. Unlawful to engage in public contracting  
 17 business without license. It shall be unlawful for any  
 18 person or any combination of persons to engage in the  
 19 business or act in the capacity of public contractor as  
 20 herein defined within the state of Montana without having a  
 21 license therefor as herein provided. Evidence of the  
 22 securing of any permit from a governmental agency or the  
 23 employment of any person on a public construction project  
 24 must be accepted by the board or any court of this state as  
 25 prima facie evidence that the person securing such permit or

1 employing any person on a public construction project is  
 2 acting in the capacity of a public contractor under this  
 3 chapter."

4 Section 8. Section 37-71-202, MCA, is amended to read:

5 "37-71-202. Certain small or federal public contracts  
 6 exempt Exemptions. This chapter does not apply to:

7 (1) Nothing herein shall require any contractor to pay  
 8 any license fee on any public contract project of a value  
 9 less than \$5,000; nor shall any contractor be required to  
 10 have a license hereunder in order to submit a bid or  
 11 proposal for contracts advertised to be let by the Montana  
 12 highway commission where federal aid is obtained from the  
 13 bureau of public roads or the department of agriculture of  
 14 the United States; neither shall a successful bidder be  
 15 required to be licensed as provided herein before the  
 16 awarding and execution of any contract to be let by the  
 17 state highway commission where federal aid from the bureau  
 18 of public roads or the department of agriculture of the  
 19 United States is involved.

20 (2) any contractor who contracts exclusively with TO  
 21 DO CONSTRUCTION WORK FOR, OR ANY CONSTRUCTION WORK PERFORMED  
 22 FOR the federal government, an instrumentality of the  
 23 federal government, an Indian tribe, or a tribal member  
 24 within the exterior boundaries of an Indian reservation;

25 (3) work done exclusively by an employee of the United

1 States government, the state of Montana, or any town, city,  
 2 county, school district, irrigation district, reclamation  
 3 district, or other political subdivision of this state;

4 (4) officers of a court when they are acting within  
 5 the scope of their office;

6 (5) work done exclusively by public utilities  
 7 operating under the regulation of the public service  
 8 commission on construction, maintenance, and development  
 9 work incidental to their business;

10 (6) the sale or installation of any finished products,  
 11 materials, or articles of merchandise that are not actually  
 12 fabricated into and do not become a permanent, fixed part of  
 13 the structure;

14 (7) registered architects or registered professional  
 15 engineers, WHEN ACTING SOLELY IN THEIR PROFESSIONAL  
 16 CAPACITY;

17 (8) a person who merely furnishes materials or  
 18 supplies without fabricating them into or consuming them in  
 19 the performance of the work of a public contractor."

20 NEW SECTION. Section 9. Classification of licenses.

21 (1) For the purpose of classification, the contracting  
 22 business includes:

23 (a) the general engineering contracting field. A  
 24 general engineering contractor is a contractor whose  
 25 principal contracting business is in connection with fixed

1 works, including irrigation, drainage, water supply, water  
 2 power, flood control, harbors, railroads, highways, tunnels,  
 3 airports and airways, sewers and sewage disposal systems,  
 4 bridges, inland waterways, pipelines for transmission of  
 5 petroleum and other liquid or gaseous substances,  
 6 refineries, chemical plants and industrial plants, piers and  
 7 foundations, and structures or work incidental thereto.

8 (b) the general building contracting field. A general  
 9 building contractor is a contractor whose principal  
 10 contracting business is in connection with any structure  
 11 built, being built, or to be built for the support, shelter,  
 12 and enclosure of persons, animals, personal property, or  
 13 movable property of any kind, requiring in its construction  
 14 the use of more than two unrelated building trades or  
 15 crafts, or to do or superintend the whole or any part  
 16 thereof.

17 (c) the specialty contracting field. A specialty  
 18 contractor is a contractor whose operations as such are the  
 19 performance of construction requiring special skill and  
 20 whose principal contracting business involves the use of  
 21 specialized building trades or crafts.

22 (2) General engineering contracting and general  
 23 building contracting are mutually exclusive fields of  
 24 contracting.

25 (3) This section does not prevent the board from

1 establishing, broadening, limiting, or otherwise  
 2 effectuating classifications in a manner consistent with  
 3 established custom, usage, and procedure in the construction  
 4 business.

5 (4) The board may limit by rule the fields of public  
 6 contracting and scope of the operations of a licensed  
 7 contractor.

8 (5) The board is prohibited from establishing  
 9 classifications in such a manner as to determine or limit  
 10 craft jurisdictions.

11 Section 10. Section 37-71-211, MCA, is amended to  
 12 read:

13 "37-71-211. Application for license -- contents --  
 14 fees. (1) To obtain a license under this chapter, the  
 15 applicant shall submit on such forms as the department board  
 16 shall prescribe an application, under oath, which shall  
 17 contain a statement of the applicant's experience and  
 18 qualifications as a contractor; the value and character of  
 19 contract work completed and for whom performed during 5  
 20 years prior to the filing of such application; and a  
 21 complete financial statement prepared by a certified public  
 22 accountant on such forms and disclosing such information as  
 23 shall be required by the department board. Such application  
 24 shall also contain such other information as may be  
 25 requested by the department board under such rules as may be



1 adopted by the department board and which will assist the  
 2 department board in determining the applicant's fitness to  
 3 act in the capacity of a public contractor as defined in  
 4 this chapter. Such application shall also contain a  
 5 statement that the applicant desires the issuance of a  
 6 license under the terms of this chapter and shall specify  
 7 the field fields of contracting ~~and--the--class--of--license~~  
 8 licenses applied for.

9 (2) The application must be accompanied by a fee fixed  
 10 by the board.

11 (3) If the holder of a license within a field of  
 12 contracting applies for another license within a different  
 13 field of contracting or a different classification within  
 14 the same field of contracting, he shall pay an additional  
 15 fee established by the board, which may not exceed 25% of  
 16 the fee for the initial application for a license."

17 Section 11. Section 37-71-212, MCA, is amended to  
 18 read:

19 "37-71-212. Investigation of applicant -- issuance of  
 20 license. It shall be the duty of the department board to  
 21 investigate and determine the applicant's fitness to act in  
 22 the capacity of public contractor as defined in this  
 23 chapter, and based on the following criteria:

24 (1) The board must require an applicant to show such a  
 25 degree of experience, financial responsibility, and general

1 knowledge of the building, safety, health, LABOR, TAXATION,  
 2 and lien laws of the state of Montana and the rudimentary  
 3 principles of the contracting business as it considers  
 4 necessary for the safety and protection of the public.

5 (2) An applicant may satisfy experience and knowledge  
 6 requirements in the following ways:

7 (a) if an individual, he may qualify by personal  
 8 appearance or by the appearance of his responsible managing  
 9 employee; or

10 (b) if a partnership, corporation, or any other  
 11 combination or organization, it may qualify by the  
 12 appearance of the responsible managing employee of the firm.

13 (3) The individual qualifying on behalf of an  
 14 individual or firm under subsection (2) must allege and  
 15 prove that he is a responsible managing employee of such  
 16 individual or firm.

17 (4) The board may,--under-reasonable-rules-adopted-by  
 18 it, ADOPT REASONABLE RULES IN ACCORDANCE WITH THE PROVISIONS  
 19 OF THIS CHAPTER TO investigate, classify, and qualify  
 20 applicants for public contractors' licenses by written or  
 21 oral examinations, or both. The board is authorized to issue  
 22 public contractors' licenses to qualified applicants. The  
 23 examinations may, in the discretion of the board, be given  
 24 in specific classifications only. THE BOARD SHALL PREPARE  
 25 AND MAKE AVAILABLE TO APPLICANTS AND LICENSEES AN

1 INFORMATION PAMPHLET PERTAINING TO ALL STATE STATUTES OR  
 2 RULES WHICH MAY BE COVERED IN THE EXAMINATION.

3 (5) The financial responsibility of an applicant or a  
 4 licensee must be established according to rules adopted by  
 5 the board. The rules may include the following standards and  
 6 criteria in connection with each applicant or public  
 7 contractor and each associate or partner thereof:

8 (a) net worth;

9 (b) amount of liquid assets;

10 (c) prior payment and credit records;

11 (d) previous business experience;

12 (e) prior and pending lawsuits;

13 (f) prior and pending liens;

14 (g) adverse judgements;

15 (h) prior suspension or revocation of a contractor's  
 16 license in Montana or elsewhere;

17 (i) past and present business record of solvency; and

18 (j) information obtained from confidential financial  
 19 references and credit reports.

20 (6) If the applicant or contractor is a corporation,  
 21 its financial responsibility must be established  
 22 independently of and without reliance on the assets of its  
 23 officers, directors, or stockholders, but the financial  
 24 responsibility of its officers and directors may be inquired  
 25 into and considered as a criterion in determining the

1 corporation's financial responsibility. The board may  
 2 require an applicant or contractor to furnish a surety bond  
 3 or other security acceptable to the board, in an amount  
 4 fixed by the board.

5 (7) An applicant for a public contractor's license and  
 6 each officer, director, partner, and associate thereof must  
 7 possess good character. Lack of character may be established  
 8 by showing that the applicant or any officer, director,  
 9 partner, or associate thereof has:

10 (a) committed any act which, if committed by any  
 11 licensed public contractor, would be grounds for the  
 12 suspension or revocation of a public contractor's license;

13 (b) entered a plea of guilty to, been found guilty of,  
 14 or been convicted of a felony or crime involving moral  
 15 turpitude arising out of, in connection with, or related to  
 16 the activities of such person in such a manner as to  
 17 demonstrate his unfitness to act as a public contractor, and  
 18 the time for appeal has elapsed or the judgment of  
 19 conviction has been affirmed on appeal; or

20 (c) had a license revoked for reasons that would  
 21 preclude the granting of a license for which the application  
 22 has been made.

23 (8) no No license shall be issued to such an applicant  
 24 until the expiration of 10 days from and after the filing of  
 25 such application. The license so issued in pursuance of the

1 first application shall entitle the licensee to act as a  
 2 public contractor within this state, subject to the  
 3 limitations of such license, until the expiration of the  
 4 then-current calendar year."

5 NEW SECTION. Section 12. Power to waive certain  
 6 requirements. In a case in which an applicant has previously  
 7 been licensed in Montana or elsewhere as an individual, as a  
 8 member of a licensed partnership, or as an officer of a  
 9 corporation and the prior license has never been suspended  
 10 or revoked and there is no disciplinary proceeding pending  
 11 against the applicant or any licensee with whom he has been  
 12 associated, the board may waive the requirement for written  
 13 or oral examinations or information requested in the  
 14 prescribed application form or any part thereof.

15 NEW SECTION. Section 13. Persons prohibited from  
 16 serving as officers, directors, associates, or partners of  
 17 licensee. (1) Any person is prohibited from serving as an  
 18 officer, director, associate, or partner of a licensee who:  
 19 (a) has been denied a license or has had his license  
 20 revoked or suspended or has been denied a renewal of a  
 21 license; or  
 22 (b) has been a member, officer, director, or associate  
 23 of any partnership, corporation, firm, or association whose  
 24 application for a license has been denied or whose license  
 25 has been revoked or suspended or which has been denied a

1 renewal of a license and, while acting as such member,  
 2 officer, director, or associate, had knowledge of or  
 3 participated in any of the events leading to denial,  
 4 revocation, or suspension.

5 (2) Any act or omission constituting a cause for  
 6 disciplinary action against any partnership, corporation,  
 7 firm, or association also constitutes a cause for  
 8 disciplinary action against any licensee who is a member,  
 9 officer, director, or associate of such partnership,  
 10 corporation, firm, or association and who participated in  
 11 the prohibited act or omission.

12 NEW SECTION. Section 14. Cessation of association of  
 13 responsible managing employee -- replacement. (1) If the  
 14 individual qualifying on behalf of another individual or a  
 15 firm pursuant to 37-71-212 ceases for any reason to be  
 16 connected with the licensee, the licensee shall notify the  
 17 board in writing within 30 days of such cessation of  
 18 association or employment. If a notice is given, the license  
 19 shall remain in force for a reasonable length of time to be  
 20 set by the board, not to exceed 60 days from the date of  
 21 such cessation of association or employment.

22 (2) The licensee shall replace the person originally  
 23 qualified with another individual similarly qualified and  
 24 approved by the board within the time limit prescribed by  
 25 subsection (1), unless extended by the board for good cause.

1 (3) If the licensee fails to notify the board within  
2 the 30-day period, his license must be automatically  
3 suspended. The license must be reinstated upon the  
4 replacement of the person originally qualified by another  
5 individual similarly qualified and approved by the board.

6 Section 15. Section 37-71-213, MCA, is amended to  
7 read:

8 "37-71-213. Renewal -- waiting period after  
9 cancellation revocation. (1) Any license issued under the  
10 provisions of this chapter may be renewed for each  
11 successive calendar year by obtaining from the department  
12 board a certificate of renewal thereof. For the purpose of  
13 obtaining such certificate of renewal, the licensee shall  
14 file with the department board an application therefor,  
15 stating the field of contracting and class of license  
16 applied for and containing at least the same information as  
17 that required in the application for the original license.  
18 The application for such certificate of renewal must be made  
19 to the department board on or before March 1 of each  
20 successive calendar year, and such renewal certificate shall  
21 be good for the then-current calendar year.

22 (2) At the time of filing the application for a  
23 certificate of renewal, the applicant shall pay to the  
24 department board a license fee equal to 50% of the license  
25 fee for the original license fixed by the board, provided

1 that if any applicant for a certificate of renewal shall  
2 apply for a renewal under a different field ~~or class~~ from  
3 the license theretofore issued to him, such new license  
4 shall be issued only upon the same showing and under the  
5 same terms and conditions and upon payment of the same fee  
6 required for the issuance of an original license.

7 ~~(3) All certificates of renewal wherein the applicant~~  
8 ~~does not apply for a change in the field or class of license~~  
9 ~~shall be issued by the department to the applicant forthwith~~  
10 ~~when the application is filed and the license renewal fee~~  
11 ~~paid.~~

12 ~~†~~(3) After cancellation revocation of a license,  
13 such licensee shall may not be relicensed during ~~the current~~  
14 ~~calendar year in which the offense was committed~~ within 6  
15 months of the date on which the license was revoked."

16 Section 16. Section 37-71-301, MCA, is amended to  
17 read:

18 "37-71-301. Complaints against licensee -- grounds --  
19 investigation -- hearing -- suspension of license --  
20 appeals. (1) Any person or other organization may file a  
21 duly verified complaint with the department board charging  
22 that the licensee is guilty of one or more of the following  
23 acts or omissions:

24 (a) abandonment of any contract or failure to complete  
25 or to prosecute diligently construction projects for the

1 stated price, including modifications, without legal excuse;

2 (b) diversion of funds or property received under  
 3 express agreement for prosecution or completion of a  
 4 specific contract under this chapter or for a specified  
 5 purpose in the prosecution or completion of any contract and  
 6 their application or use for any other contract, obligation,  
 7 or purpose with intent to defraud or deceive creditors or  
 8 the owner;

9 (c) the doing of any willful fraudulent act by the  
 10 licensee as a public contractor in consequence of which  
 11 another is substantially injured;

12 (d) the making of any false statement in any  
 13 application for a license or renewal thereof;

14 (e) the failure to comply with the provisions of  
 15 18-1-112 requiring preference of products manufactured or  
 16 produced in this state by Montana industry and labor;

17 (f) willful and prejudicial departure from or  
 18 disregard of plans or specifications in any material respect  
 19 without the consent of the owner, his duly authorized  
 20 representative, or the person entitled to have the  
 21 particular construction project or operation completed in  
 22 accordance with the plans and specifications;

23 (g) willful failure or refusal, without legal excuse,  
 24 on the part of a licensee to comply with the terms of a  
 25 construction contract or written warranty, thereby causing

1 material injury to another;

2 (h) willful or deliberate disregard and violation of:

3 (i) the building laws of the state or any political  
 4 subdivision thereof; or

5 (ii) the safety laws or labor laws of the state;

6 (i) willful or deliberate failure by any licensee or  
 7 agent or officer thereof to pay any money when due for  
 8 materials or services rendered in connection with his  
 9 operations as a public contractor, when he has the capacity  
 10 to pay or has received sufficient funds therefor as payment  
 11 for the particular construction work, project, or operation  
 12 for which the services or materials were rendered or  
 13 purchased, or the false denial of any such amount due or the  
 14 validity of the claim thereof with intent to secure a  
 15 discount upon such indebtedness or with intent to injure,  
 16 delay, or defraud the person to whom such indebtedness is  
 17 due;

18 (j) failure to establish financial responsibility in  
 19 the manner provided in 37-71-212 at the time of renewal of  
 20 the license or at any other time required by the board;

21 (k) acting in the capacity of a public contractor  
 22 under any license except:

23 (i) in the name of the licensee as set forth upon the  
 24 license; or

25 (ii) as an employee of the licensee as set forth in the

1 application for such license or as later changed pursuant to  
2 this chapter and the rules of the board;

3 (l) intentionally evading the provisions of this  
4 chapter by:

5 (i) aiding or abetting an unlicensed person to evade  
6 the provisions of this chapter;

7 (ii) combining or conspiring with an unlicensed person  
8 to perform an unauthorized act;

9 (iii) allowing a license to be used by an unlicensed  
10 person;

11 (iv) acting as agent, partner, or associate of an  
12 unlicensed person; or

13 (v) furnishing estimates or bids to an unlicensed  
14 person;

15 (m) any attempt by a licensee to assign, transfer, or  
16 otherwise dispose of a license or permit the unauthorized  
17 use thereof;

18 (n) workmanship which is not commensurate with  
19 standards of the trade in general or which is below building  
20 or construction codes adopted by the city or county in which  
21 the work is performed. If no applicable building or  
22 construction code has been adopted locally, then workmanship  
23 must meet the standards determined by the latest edition of  
24 the Uniform Building Code, Uniform Plumbing Code, or  
25 National Electrical Code adopted by the state.

1 (o) acting in the capacity of a contractor beyond the  
2 scope of the license;

3 (p) bidding to contract or contracting for a sum for a  
4 construction contract or project in excess of the limit  
5 placed on the license by the board WILLFUL OR DELIBERATE  
6 FAILURE TO PAY ANY CITY, COUNTY, OR STATE TAX;

7 (q) knowingly entering into a contract with a  
8 contractor while that contractor is not licensed or bidding  
9 a contract or entering into a contract with a contractor for  
10 work in excess of his limit or beyond the scope of his  
11 license;

12 (r) advertising as a public contractor without a valid  
13 license in the appropriate classification established by  
14 [section 9]. Advertising must include the contractor's  
15 license number, and failure to do so is grounds for a  
16 complaint under this section.

17 (s) failure in any material respect to comply with the  
18 provisions of this chapter or the rules of the board.

19 (2) Upon the filing of such complaint, the department  
20 board shall investigate the charge and within 60 days after  
21 the filing of such complaint render and file a preliminary  
22 decision, with the reasons therefor. If the department's  
23 board's preliminary decision be that the licensee has been  
24 guilty of any of such acts or omissions, the department  
25 board shall suspend may take disciplinary action against the

1 contractor's license in accordance with 37-71-302. At any  
 2 time within 20 days thereafter, the complainant or the  
 3 contractor may petition the department board for a rehearing  
 4 contested case hearing in accordance with the Montana  
 5 Administrative Procedure Act. ~~In the order granting or~~  
 6 ~~denying such rehearing, the department shall set forth a~~  
 7 ~~statement of the particular grounds and reasons for the~~  
 8 ~~department's actions on such petition and shall mail a copy~~  
 9 ~~of such order to the parties who have appeared in support of~~  
 10 ~~or in opposition to the petition for rehearing. If a~~  
 11 ~~rehearing be granted, the department shall set the matter~~  
 12 ~~for further hearing on due notice to the parties and, within~~  
 13 ~~30 days after submission of the matter, serve the~~  
 14 ~~department's decision after rehearing in like manner as an~~  
 15 ~~original decision.~~

16 ~~(3) The filing of such petition for rehearing as to~~  
 17 ~~the department's actions in suspending or canceling such~~  
 18 ~~license shall suspend the operation of such action and~~  
 19 ~~permit the licensee to continue to do business as a public~~  
 20 ~~contractor pending final determination of the controversy.~~

21 ~~(4) Within 30 days after the decision on rehearing,~~  
 22 ~~any party aggrieved by such decision of the department may~~  
 23 ~~appeal therefrom to the district court in and for the county~~  
 24 ~~in which the licensee under this chapter resides or does~~  
 25 ~~business as a public contractor by serving upon the~~

1 ~~department a notice of such appeal. The matter shall~~  
 2 ~~thereupon be heard de novo by the district court. An appeal~~  
 3 ~~may be taken from the decision of the district court in the~~  
 4 ~~same manner as appeals in other civil cases.~~

5 ~~(5) In all cases where the licensee has filed his~~  
 6 ~~notice of appeal from the decision of the department or from~~  
 7 ~~the decision of the district court, such licensee shall be~~  
 8 ~~entitled to continue to do business as a public contractor~~  
 9 ~~pending final decision of the controversy."~~

10 Section 17. Section 37-71-302, MCA, is amended to  
 11 read:

12 "37-71-302. Penalties Violations -- discipline --  
 13 penalties. (1) Any person or other organization acting in  
 14 the capacity of public contractor within the meaning of this  
 15 chapter without a license as herein provided shall be guilty  
 16 of a misdemeanor and shall upon conviction thereof, if an  
 17 individual, be punished by a fine of not to exceed \$500 or  
 18 by imprisonment in the county jail for a term not to exceed  
 19 6 months or by both such fine and imprisonment, in the  
 20 discretion of the court. The same penalties shall apply  
 21 upon conviction to any member of a partnership or to any  
 22 construction, managing, or directing officer of any  
 23 corporation or other organization consenting to,  
 24 participating in, or aiding or abetting any such violation  
 25 of this chapter.

1       (2) No license may be used for any purpose by any  
 2 person other than the person to whom such license is issued,  
 3 and no license may be assigned, transferred, or otherwise  
 4 disposed of to permit the unauthorized use thereof. The  
 5 license of any person who violates any provision of this  
 6 section shall be automatically canceled and revoked.

7       (3) The board may suspend or revoke a license, refuse  
 8 renewal of a license, impose limits on the field, scope, and  
 9 monetary limit of a license, or reprimand or take other less  
 10 severe disciplinary action, including requiring or  
 11 increasing the amount of the surety bond or cash deposit of  
 12 the licensee, if the licensee commits any act which  
 13 constitutes a cause for disciplinary action.

14       (4) No person engaged in the business or acting in the  
 15 capacity of a public contractor may bring or maintain any  
 16 action in the courts of this state for the collection of  
 17 compensation for the performance of any act or contract for  
 18 which a license is required by this chapter without alleging  
 19 and proving that he was a duly licensed contractor when the  
 20 job was bid and during the performance of such act or  
 21 contract.

22       (5) Any person convicted of acting as a public  
 23 contractor without a license may be disqualified from taking  
 24 a written or oral examination for a contractor's license for  
 25 a period of 6 months from the date of his conviction.

1       ~~(2)~~(6) A person failing to file a contractor's license  
 2 return as provided and required by the department of  
 3 revenue, ~~upon conviction,~~ shall, upon conviction, be fined  
 4 not less than \$1,000 or more than \$10,000."

5       Section 18. Section 15-50-205, MCA, is amended to  
 6 read:

7       "15-50-205. Additional license tax imposed. (1) In  
 8 addition to the fees enumerated in ~~37-71-204~~ Title 37,  
 9 chapter 71, each public contractor shall pay to the  
 10 department of revenue an additional license fee in a sum  
 11 equal to 1% of the gross receipts, as defined in 37-71-101,  
 12 from public contracts during the income year for which the  
 13 license is issued.

14       (2) The additional license fee shall be computed upon  
 15 the basis of the entire contract for each separate contract  
 16 let by any of the public bodies as specified in  
 17 37-71-101~~(4)~~."

18       Section 19. Section 15-50-206, MCA, is amended to  
 19 read:

20       "15-50-206. Withholding license fee from payments --  
 21 refunds. (1) The prime contractor shall withhold the  
 22 additional 1% license fee from payments to his  
 23 subcontractors and inform the department of revenue on  
 24 prescribed forms of the amount of the additional 1% license  
 25 fee in his account to be allocated and transferred to the



1 subcontractor. The notification to transfer portions of the  
 2 additional 1% license fee must be filed within 30 days after  
 3 each payment is made to subcontractors. If any prime  
 4 contractor fails to file the required allocation and  
 5 transfer report at the time required by or under the  
 6 provisions of this chapter, a penalty computed at the rate  
 7 of 10% of the additional 1% license fee withheld from  
 8 subcontractors shall be due from the prime contractor.

9 (2) The state, county, city, or any agency or  
 10 department thereof, as described in 37-71-101~~(4)~~, for whom  
 11 the contractor is performing public work shall withhold, in  
 12 addition to other amounts withheld as provided by law, 1% of  
 13 all payments due the contractor and shall transmit such  
 14 moneys to the department of revenue. In the event that the  
 15 1% of gross receipts, as defined in 37-71-101, is not  
 16 withheld as provided, the contractor shall make payment of  
 17 these amounts to the department within 30 days after the  
 18 date on which the contractor receives each increment of  
 19 payment for work performed by the contractor.

20 (3) Any overpayment of the 1% of gross receipts, as  
 21 defined in 37-71-101, withheld or paid by any contractor  
 22 hereunder shall be refunded by the department of revenue at  
 23 the end of the income year upon written application  
 24 therefor."

25 NEW SECTION. Section 20. Repealer. Sections 37-71-103

1 and 37-71-204, MCA, are repealed.

2 NEW SECTION. Section 21. Extension of authority. Any  
 3 existing authority of the department of commerce to make  
 4 rules on the subject of the provisions of this act is  
 5 extended to the provisions of this act.

6 NEW SECTION. Section 22. Codification instruction.  
 7 (1) Section 1 is intended to be codified as an integral  
 8 part of Title 2, chapter 15, part 18, and the provisions of  
 9 Title 2, chapter 15, part 18, apply to section 1.

10 (2) Sections 2, 4, 9, and 12 through 14 are intended  
 11 to be codified as an integral part of Title 37, chapter 71,  
 12 and the provisions of Title 37, chapter 71, apply to  
 13 sections 2, 4, 9, and 12 through 14.

14 NEW SECTION. Section 23. Severability. If a part of  
 15 this act is invalid, all valid parts that are severable from  
 16 the invalid part remain in effect. If a part of this act is  
 17 invalid in one or more of its applications, the part remains  
 18 in effect in all valid applications that are severable from  
 19 the invalid applications.

20 NEW SECTION. Section 24. Effective date. (1) Except  
 21 as provided in subsection (2), this act is effective January  
 22 1, 1986.

23 (2) Section 4 and this section are effective on  
 24 passage and approval, but rules adopted pursuant to section  
 25 4 may not be effective prior to January 1, 1986.

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-End-

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