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INTRODUCED BY

House

BILL NO.

601

BY REQUEST OF THE HOUSE TAXATION COMMITTEE

Howard Ream

Forshee

5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC
6 CONTRACTORS; AMENDING SECTIONS 15-50-205 AND 15-50-206, MCA; REPEALING SECTIONS
7 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203,
8 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

10

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

12

13 Section 1. Section 15-50-205, MCA, is amended to read:

14 "15-50-205. Additional license tax Tax imposed on gross receipts from public contracts. (1) In
15 addition to the fees enumerated in 37-71-204, each A public contractor, unless he the contractor
16 constructs or works on a federal research facility, shall pay to the department of revenue an additional a
17 license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts
18 during the income year for in which the license is issued public contractor receives payment.

19 (2) The additional license fee shall must be computed upon the basis of the entire contract for each
20 separate contract let by any of the public bodies as specified in 37-71-101(3) this section.

21 (3) (a) A "public contractor", within the meaning of this section, includes any person who submits
22 a proposal to perform or enters into a contract for performing public construction work in the state with
23 the federal government or state of Montana; with any board, commission, or department of the state; with
24 any board of county commissioners, any city or town council, or any agency of any of them; or with any
25 other public board, body, commission, or agency authorized to let or award contracts for any public work
26 when the contract cost, value, or price of which exceeds the sum of \$5,000.

27 (b) The term public contractor includes subcontractors undertaking to perform work within their
28 field of contracting and within the limits of their class of license covered by the original contract or any part
29 of the contract when the contract cost, value, or price of which exceeds the sum of \$5,000."

30



Montana Legislative Council

1 **Section 2.** Section 15-50-206, MCA, is amended to read:

2 **"15-50-206. Withholding license fee from payments -- refunds.** (1) The prime contractor shall
3 withhold the ~~additional~~ 1% license fee from payments to ~~his~~ subcontractors and inform the department of
4 revenue on prescribed forms of the amount of the ~~additional~~ 1% license fee in ~~his~~ the prime contractor's
5 account to be allocated and transferred to the subcontractor. The notification to transfer portions of the
6 ~~additional~~ 1% license fee must be filed within 30 days after each payment is made to subcontractors. If
7 any prime contractor fails to file the required allocation and transfer report at the time required by or under
8 the provisions of this chapter, a penalty computed at the rate of 10% of the ~~additional~~ 1% license fee
9 withheld from subcontractors ~~shall be~~ is due from the prime contractor.

10 (2) The state, county, city, or any agency or department thereof, as described in ~~37-71-101(3)~~
11 15-50-205, for whom the contractor is performing public work shall withhold, in addition to other amounts
12 withheld as provided by law, 1% of all payments due the contractor and shall transmit ~~such moneys that~~
13 money to the department of revenue. ~~In the event that~~ If the 1% of gross receipts, as defined in
14 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the
15 department within 30 days after the date on which the contractor receives each increment of payment for
16 work performed by the contractor.

17 (3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by
18 any contractor ~~hereunder shall~~ must be refunded by the department of revenue at the end of the income
19 year upon written application ~~therefor~~."

20

21 **NEW SECTION. Section 3. Repealer.** Sections 37-71-101, 37-71-102, 37-71-103, 37-71-104,
22 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213,
23 37-71-301, and 37-71-302, MCA, are repealed.

24

25 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0601, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act repealing the license requirements for public contractors; and providing an immediate effective date.

ASSUMPTIONS:

1. The Department of Commerce estimates Public Contractor Licensing collections at \$255,000 in both FY96 and FY97.

FISCAL IMPACT:

Revenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Public Contractor License Fees	(255,000)	(255,000)
General Fund (01)	(255,000)	(255,000)

DAVE LEWIS 3-20-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ROGER SOMERVILLE, PRIMARY SPONSOR DATE

Fiscal Note for HB0601, as introduced

HB 601

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 15-50-101, MCA, IS AMENDED TO READ:

15-50-101. Definition Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of revenue as provided in 2-15-1301.

16 (2) In this chapter, for the purposes hereof, "gross" "Gross receipts" means all receipts from
17 sources within the state, whether in the form of money, credits, or other valuable consideration, received
18 from, engaging in, or conducting a business, without deduction on account of the cost of the property sold,
19 the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense
20 whatsoever. However, gross receipts shall does not include cash discounts allowed and taken on sales and
21 sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments
22 received in final liquidation of accounts included in the gross receipts of any previous return made by the
23 person.

24 (3) (a) "Public contractor", means any person who submits a proposal to perform or enters into
25 a contract for performing public construction work in the state with the federal government or state of
26 Montana; with any board, commission, or department of the state; with any board of county
27 commissioners, any city or town council, or any agency of any of them; or with any other public board,
28 body, commission, or agency authorized to let or award contracts for any public work when the contract
29 cost, value, or price of which exceeds the sum of \$5,000.

30 (b) The term public contractor includes subcontractors undertaking to perform work within their

1 field of contracting and within the limits of their class of license covered by the original contract or any part
2 of the contract when the contract cost, value, or price of which exceeds the sum of \$5,000."

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4 **Section 2.** Section 15-50-205, MCA, is amended to read:

5 **"15-50-205. Additional license tax Tax imposed on gross receipts from public contracts.** (1) In
6 addition to the fees enumerated in 37-71-204, each A public contractor, unless he the contractor
7 constructs or works on a federal research facility, shall pay to the department of revenue an additional a
8 license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts
9 during the income year for in which the license is issued public contractor receives payment.

10 (2) The additional license fee shall must be computed upon the basis of the entire contract for each
11 separate contract let by any of the public bodies as specified in 37-71-101(3) this section.

12 (3) (a) A "public contractor", within the meaning of this section, includes any person who submits
13 a proposal to perform or enters into a contract for performing public construction work in the state with
14 the federal government or state of Montana; with any board, commission, or department of the state; with
15 any board of county commissioners, any city or town council, or any agency of any of them; or with any
16 other public board, body, commission, or agency authorized to let or award contracts for any public work
17 when the contract cost, value, or price of which exceeds the sum of \$5,000.

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19 field of contracting and within the limits of their class of license covered by the original contract or any part
20 of the contract when the contract cost, value, or price of which exceeds the sum of \$5,000."

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22 **Section 3.** Section 15-50-206, MCA, is amended to read:

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

11
12 NEW SECTION. SECTION 4. INSPECTION OF BOOKS OF CONTRACTOR. THE BOOKS AND
13 RECORDS OF A PUBLIC CONTRACTOR MUST BE SUBJECT TO INSPECTION BY THE DEPARTMENT
14 DURING REASONABLE HOURS.

16 NEW SECTION. SECTION 5. ESTIMATION OF TAX UPON FAILURE TO FILE STATEMENT OR PAY
17 TAX -- NOTICE. (1) IF A PERSON FAILS, NEGLECTS, OR REFUSES TO FILE THE STATEMENT REQUIRED
18 BY 15-50-206 WITHIN THE TIME REQUIRED OR FAILS TO PAY THE TAX REQUIRED BY THIS CHAPTER
19 ON OR BEFORE THE DATE PAYMENT IS DUE, THE DEPARTMENT SHALL PROCEED TO INFORM ITSELF
20 AS BEST IT MAY REGARDING THE TOTAL GROSS INCOME OF THE PERSON FROM ITS CONTRACTING
21 BUSINESS WITHIN THIS STATE DURING THE QUARTER.

22 (2) THE DEPARTMENT SHALL COMPUTE THE AMOUNT OF LICENSE TAXES DUE FROM THE
23 PERSON AND SHALL MAIL TO THE PERSON A LETTER AND TAX ASSESSMENT STATEMENT SETTING
24 FORTH THE AMOUNT OF DELINQUENT LICENSE TAX, PENALTY, AND INTEREST DUE. THE LETTER
25 MUST ADVISE THAT IF PAYMENT IS NOT MADE, A WARRANT FOR DISTRAINT MAY BE FILED.

27 NEW SECTION. SECTION 6. PENALTY AND INTEREST FOR DELINQUENCY -- WAIVER. (1)
28 LICENSE TAXES DUE UNDER THIS CHAPTER BECOME DELINQUENT IF NOT PAID WITHIN 30 DAYS
29 AFTER PAYMENT TO THE CONTRACTOR. THE DEPARTMENT SHALL ADD TO THE AMOUNT OF ALL
30 DELINQUENT LICENSE TAXES A PENALTY OF 10% OF THE AMOUNT OF LICENSE TAXES PLUS



1 INTEREST AT THE RATE OF 1% PER MONTH OR FRACTION OF A MONTH, COMPUTED ON THE TOTAL
2 AMOUNT OF LICENSE TAXES. INTEREST IS COMPUTED FROM THE DATE THE LICENSE TAXES WERE
3 DUE TO THE DATE OF PAYMENT.

4 (2) THE 10% PENALTY MAY BE WAIVED BY THE DEPARTMENT IF REASONABLE CAUSE FOR
5 THE FAILURE OR NEGLECT TO FILE THE STATEMENT REQUIRED BY 15-50-206 OR PAY THE TAX DUE
6 IS PROVIDED TO THE DEPARTMENT.

7

8 NEW SECTION. SECTION 7. WARRANT FOR DISTRAINT. IF ALL OR PART OF THE TAX
9 IMPOSED BY THIS CHAPTER IS NOT PAID WHEN DUE, THE DEPARTMENT MAY ISSUE A WARRANT FOR
10 DISTRAINT AS PROVIDED IN TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN HAS PRECEDENCE
11 OVER ANY CLAIM, LIEN, OR DEMAND THAT IS FILED AND RECORDED AFTER THE WARRANT IS ISSUED.

12

13 NEW SECTION. SECTION 8. DISPOSAL OF LICENSE TAXES. LICENSE TAXES COLLECTED
14 UNDER THIS CHAPTER MUST BE DEPOSITED BY THE DEPARTMENT WITH THE STATE TREASURER, WHO
15 SHALL CREDIT THEM TO THE GENERAL FUND OF THE STATE.

16

17 SECTION 9. SECTION 18-1-106, MCA, IS AMENDED TO READ:

18 "18-1-106. Department of commerce to determine residency of selected contractors -- applications
19 for redetermination -- determination as prima facie evidence. (1) The department of commerce shall
20 determine whether or not certain contractors, ~~issued public contractor's licenses under the provisions of~~
21 Title 37, chapter 71, are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103.
22 Any public agency charged by law with the responsibility for the execution of any contract subject to the
23 provisions of 18-1-102 may request that a determination of resident/nonresident status be made by the
24 department. All requests must specify the name and address of the licensed public contractor for whom
25 a determination of resident/nonresident status is required.

26 (2) If a determination is made that a licensed public contractor is not a resident but ~~he~~ thereafter
27 qualifies as such a resident, ~~he~~ the contractor may apply to the department of commerce for a
28 redetermination of ~~his~~ residency. If, upon redetermination, the ~~licensed~~ public contractor is found to qualify
29 as a resident, ~~he shall~~ the contractor must be furnished a letter by the department attesting to ~~such~~ resident
30 status.

(3) The determination of the department of commerce that a licensed public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

NEW SECTION. SECTION 10. CODIFICATION INSTRUCTION. [SECTIONS 4 THROUGH 8] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 50, PART 3, AND THE PROVISIONS OF TITLE 15, CHAPTER 50, APPLY TO [SECTIONS 4 THROUGH 8].

8 NEW SECTION. Section 11. Repealer. Sections 37-71-101, 37-71-102, 37-71-103, 37-71-104,

9 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213,

10 37-71-301, and 37-71-302, MCA, are repealed.

12 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

-END-



5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC
6 CONTRACTORS; AMENDING SECTIONS 15-50-101, 15-50-205 AND, 15-50-206, AND 18-1-106, MCA;
7 REPEALING SECTIONS 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202,
8 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.



1 HOUSE BILL NO. 601

2 INTRODUCED BY SOMERVILLE, ELLIOTT, STORY, HIBBARD, REAM, FORRESTER
3 BY REQUEST OF THE HOUSE TAXATION COMMITTEE4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC
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17 sources within the state, whether in the form of money, credits, or other valuable consideration, received
18 from, engaging in, or conducting a business, without deduction on account of the cost of the property sold,
19 the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense
20 whatsoever. However, gross receipts ~~shall~~ does not include cash discounts allowed and taken on sales and
21 sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments
22 received in final liquidation of accounts included in the gross receipts of any previous return made by the
23 person.24 (3) (a) "Public contractor", means any person who submits a proposal to perform or enters into
25 a contract for performing public construction work in the state with the federal government or state of
26 Montana; with any board, commission, or department of the state; with any board of county
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29 cost, value, or price of which exceeds the sum of \$5,000.30 (b) The term public contractor includes subcontractors undertaking to perform work within their

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14 **DURING REASONABLE HOURS.**

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16 **NEW SECTION. SECTION 5. ESTIMATION OF TAX UPON FAILURE TO FILE STATEMENT OR PAY**
17 **TAX -- NOTICE.** (1) **IF A PERSON FAILS, NEGLECTS, OR REFUSES TO FILE THE STATEMENT REQUIRED**
18 **BY 15-50-206 WITHIN THE TIME REQUIRED OR FAILS TO PAY THE TAX REQUIRED BY THIS CHAPTER**
19 **ON OR BEFORE THE DATE PAYMENT IS DUE, THE DEPARTMENT SHALL PROCEED TO INFORM ITSELF**
20 **AS BEST IT MAY REGARDING THE TOTAL GROSS INCOME OF THE PERSON FROM ITS CONTRACTING**
21 **BUSINESS WITHIN THIS STATE DURING THE QUARTER.**

22 **(2) THE DEPARTMENT SHALL COMPUTE THE AMOUNT OF LICENSE TAXES DUE FROM THE**
23 **PERSON AND SHALL MAIL TO THE PERSON A LETTER AND TAX ASSESSMENT STATEMENT SETTING**
24 **FORTH THE AMOUNT OF DELINQUENT LICENSE TAX, PENALTY, AND INTEREST DUE. THE LETTER**
25 **MUST ADVISE THAT IF PAYMENT IS NOT MADE, A WARRANT FOR DISTRAINT MAY BE FILED.**

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