

SENATE BILL NO. 5

INTRODUCED BY HOLDEN

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING REGISTRATION REQUIREMENTS FOR CONTRACTORS; REVISING BONDING LAWS CONCERNING CONTRACTORS; AMENDING SECTIONS 39-3-703, 39-3-705, 39-3-706, AND 39-71-120, MCA; REPEALING SECTIONS 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-3-703, MCA, is amended to read:

"39-3-703. Contractor to furnish bond -- bond requirements — deposit. (1) ~~Except as provided in subsection (3), a~~ A contractor who contracts with any person or entity to do any work or perform any services for the person or entity, except personal services of the contractor not involving the work of hired employees, shall furnish a surety bond or other form of security that must be:

(a) approved by the commissioner;

(b) in an amount:

~~(i) of \$6,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole proprietor, an independent contractor, or a corporate officer working as an individual without employees;~~

~~(ii) equal to a contractor's average monthly employee payroll, based on 12 consecutive months' payroll, as estimated by the commissioner. However, the amount may not be less than \$6,000 for a general contractor or \$4,000 for a specialty contractor and may not exceed \$25,000 for any contractor.;~~

(c) in the name of the state of Montana;

(d) for the purpose of ~~guaranteeing:~~

~~(i) insuring~~ the wages and fringe benefits of all workers employed by the contractor for the contracted work;

~~(ii) all taxes and contributions due to the state;~~

1 ~~(iii) payment to persons furnishing labor;~~

2 (e) filed with the commissioner within 1 week of the making of the contract or the commencement
3 of work under the contract, whichever comes first.

4 (2) Only one bond is required on any contractor for each year, and when the bond is filed with and
5 approved by the commissioner, the commissioner shall certify to any person contracting with a contractor
6 that the bond is in full force and effect.

7 ~~(3) In lieu of the surety bond required by subsection (1), the contractor may file with the~~
8 ~~department a deposit consisting of cash or other security acceptable to the department.~~

9 ~~(4) A change in the name of a business or a change in the type of business may not impair a bond~~
10 ~~for the purposes of this section as long as one of the original applicants for the bond maintains partial~~
11 ~~ownership in the business covered by the bond."~~

12
13 **Section 2.** Section 39-3-705, MCA, is amended to read:

14 **"39-3-705. Suit on bond.** ~~(1) Any person, firm, or corporation having a claim against the employee~~
15 ~~employed by a contractor for any of the items referred to in 39-3-703 may bring an action on the surety~~
16 ~~bond in the district court in the county in which the work was performed or in any county that has~~
17 ~~jurisdiction over the contractor employee's own name for wages and fringe benefits.~~

18 ~~(2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon~~
19 ~~the bond or deposit must be commenced by filing the summons and complaint with the clerk of the~~
20 ~~appropriate district court within 1 year from the date of expiration of the certificate of registration that was~~
21 ~~in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing~~
22 ~~the state became due, or the claimed contract work was completed. Service of process in an action against~~
23 ~~the contractor, the contractor's bond, or the deposit must be exclusively by service upon the department.~~
24 ~~Three copies of the summons and complaint and a fee of \$10 for handling costs must be served by certified~~
25 ~~mail upon the department at the time suit is started. The \$10 fee must be deposited in the state special~~
26 ~~revenue fund to the credit of the department. The department shall maintain a record, available for public~~
27 ~~inspection, of all suits served. Service is not complete until the department receives the \$10 fee and three~~
28 ~~copies of the summons and complaint. The service constitutes service on the registrant and the surety for~~
29 ~~suit upon the bond or deposit. The department shall mail the summons and complaint or a copy of the~~
30 ~~summons and complaint to the registrant at the address listed in the registrant's application and to the~~

1 surety within 48 hours after it has been received.

2 ~~(3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or~~
 3 ~~for any penalty assessed pursuant to Title 39, chapter 9. The liability for the surety may not accumulate~~
 4 ~~when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The surety may,~~
 5 ~~upon notice to the department and the parties, tender to the clerk of the court that has jurisdiction over the~~
 6 ~~claim an amount equal to the claims under the bond or the amount of the bond less any judgments, if any,~~
 7 ~~previously satisfied from the bond and exonerate the bond to the extent of the tender. However, if the~~
 8 ~~actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims~~
 9 ~~must be satisfied from the bond in the following order:~~

10 ~~(a) labor, including employee benefits;~~

11 ~~(b) taxes and contributions due to the state; and~~

12 ~~(c) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.~~

13 ~~(4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in~~
 14 ~~effect in the full amount required in 39-3-703, the department shall suspend the registration of the~~
 15 ~~contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied~~
 16 ~~judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount~~
 17 ~~prescribed by 39-3-703.~~

18 ~~(5) A person who filed and served a summons and complaint as required by this section and who~~
 19 ~~has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute~~
 20 ~~upon the security held by the department by serving a certified copy of the unsatisfied final judgment within~~
 21 ~~1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the~~
 22 ~~department shall pay or order to be paid from the deposit, through the district court that rendered the~~
 23 ~~judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must~~
 24 ~~be the order of receipt by the department, but the department has no liability for payment in excess of the~~
 25 ~~amount of the deposit."~~

26

27 **Section 3.** Section 39-3-706, MCA, is amended to read:

28 **"39-3-706. Liability of contractor person contracting with another contractor for failure to require**
 29 **bond.** A contractor person contracting with another a contractor who fails to require the ether contractor
 30 to be registered pursuant to Title 39, chapter 9, acquire the surety bond provided for in 39-3-703(1) is liable

1 to the employees of ~~the other~~ that contractor for their wages and fringe benefits on that particular job."

2

3 **Section 4.** Section 39-71-120, MCA, is amended to read:

4 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
5 service in the course of an occupation and:

6 (a) has been and will continue to be free from control or direction over the performance of the
7 services, both under the contract and in fact; and

8 (b) is engaged in an independently established trade, occupation, profession, or business; ~~and~~

9 ~~(c) has received an exemption granted under 39-71-401(3).~~

10 (2) An individual performing services for remuneration is considered to be an employee under this
11 chapter unless the requirements of subsection (1) are met."

12

13 NEW SECTION. **Section 5. Exception.** The provisions of this part do not apply to a resident
14 contractor who presents to the commissioner a financial statement certified by a licensed certified public
15 accountant attesting to a net worth of the contractor in excess of \$50,000.

16

17 NEW SECTION. **Section 6. Repealer.** Sections 39-9-101, 39-9-102, 39-9-103, 39-9-201,
18 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303,
19 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409,
20 and 39-9-410, MCA, are repealed.

21

22 NEW SECTION. **Section 7. Codification instruction.** [Section 5] is intended to be codified as an
23 integral part of Title 39, chapter 3, part 7, and the provisions of Title 39, chapter 3, part 7, apply to
24 [section 5].

25

26 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

27

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0005, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating registration requirements for contractors; revising bonding laws concerning contractors.

ASSUMPTIONS:

1. Repealer would eliminate contractor registration funding and responsibilities for the Legal Bureau and Hearings Bureau within the Legal/Centralized Services Division. The injunction placed on the Department of Labor and Industry (DLI) from enforcing this law leaves the department free of any unsettled legal issues, requiring an identified workload.
2. Repealer would eliminate the Contractor Registration Unit in the Employment Relations Division.
3. The DLI's administrative role in determining bonding levels and obtaining bonding surety for contractors would continue.
4. Contractor registration revenue supports the administrative operations of the Employment Relations Division. There would be \$125,923 in fiscal 1998 and \$117,166 in fiscal 1999 to be reapportioned over all funding sources of the division, because these administrative costs would continue to exist.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Legal/Centralized Services Division:		
FTE	(3.00)	(3.00)
Personal Services	(110,033)	(110,097)
Operating Expenses	(48,286)	(48,046)
Equipment	<u>(2,613)</u>	<u>(772)</u>
Total	(160,932)	(158,915)
Employment Relations Division:		
FTE	(7.50)	(7.50)
Personal Services	(233,040)	(233,562)
Operating Expenses	(37,861)	(37,339)
Equipment	<u>(4,812)</u>	<u>(4,812)</u>
Total	(266,719)	(266,719)
Total - Department of Labor and Industry:		
FTE	(10.50)	(10.50)
Expenditures	(427,651)	(425,634)
<u>Funding:</u>		
SSR (Contractor Reg - 02346)	(427,651)	(425,651)
SSR (Contractor Reg-02346)	(125,923)	(117,166)
SSR (ESA-02258)	14,740	13,399
SSR (WCA-02455)	72,719	67,703
FSR (DLI Fed Fund-03128)	1,946	1,769
FSR (Fed Safety Fnds-03130)	1,402	1,274
FSR (Fed MSHA-03195)	2,813	2,557
Prop(SIF Adm-06041)	443	403
Prop(UEF Adm-06055)	<u>31,860</u>	<u>30,561</u>
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Revenues:

Contractor Registration (02346)	(520,000)	(600,000)
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Dave Lewis 1-8-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Ric Holden 1-8-97
 RIC HOLDEN, PRIMARY SPONSOR DATE