

SENATE BILL NO. 45

INTRODUCED BY HOLDEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND CONTRACTOR REGISTRATION; AMENDING SECTIONS 39-3-703, 39-3-705, 39-9-101, 39-9-102, 39-9-201, 39-9-202, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 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, 39-9-410, AND 39-71-120, MCA; REPEALING SECTION 39-9-302, MCA; AND PROVIDING AN 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 contractor who contracts with any person or entity to do any work or perform any services for the person or entity 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~~ \$10,000 for a ~~general contractor or \$4,000 for a specialty contractor~~ if the contractor is a sole proprietor, or an independent contractor, ~~or a corporate officer working as an individual without employees; or~~

~~(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. Security is not required if a contractor does not have employees.~~

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

(d) for the purpose of guaranteeing:

(i) 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~~ unemployment insurance contributions and workers' compensation insurance liability;

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
15 contractor for any of the items referred to in 39-3-703 may bring an action on the surety bond in the
16 district court in the county in which the work was performed or in any county that has jurisdiction over the
17 contractor.

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 that 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~~ 72 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 39-9-101, MCA, is amended to read:

28 "**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
29 are competing fairly and in compliance with state laws."

30

1 Section 4. Section 39-9-102, MCA, is amended to read:

2 "39-9-102. Definitions. As used in this chapter, the following definitions apply:

3 (1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

4 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
5 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
6 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to
7 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
8 structures or works, or the installation or repair of roofing or siding; or

9 (b) in order to do work similar to that described in subsection (1)(a) upon the construction
10 contractor's property, employs members of more than one trade on a single job or under a single building
11 permit, except as otherwise provided.

12 (2) "Department" means the department of labor and industry.

13 ~~(3) "General contractor" means a contractor whose business operations require the use of more
14 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole
15 or in part.~~

16 ~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition
17 of general contractor.~~

18 ~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor
19 registration card that is current on its face."~~

21 Section 5. Section 39-9-201, MCA, is amended to read:

22 "39-9-201. Registration required -- prohibited acts -- criminal penalty. (1) ~~On or before July 1,~~
23 ~~1996,~~ each Each construction contractor shall register with the department.

24 (2) It is a misdemeanor for a construction contractor to:

25 (a) advertise, offer to perform work, submit a bid, or perform work as a construction contractor:

26 (i) without being registered as required by this chapter; or

27 (ii) when the construction contractor's registration is suspended;

28 ~~(b) use a false or expired registration number in purchasing or offering to purchase an
29 advertisement for which a contractor registration number is required; or~~

30 ~~(c)~~(b) transfer a valid registration to an unregistered construction contractor to work under a

1 registration issued to another construction contractor.

2 (3) The department may cause the criminal proceedings for a misdemeanor action under this
3 chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the
4 infraction occurs."

5

6 **Section 6.** Section 39-9-202, MCA, is amended to read:

7 **"39-9-202. Application for registration -- grounds for denial.** (1) An applicant for registration as
8 a construction contractor shall submit an application under oath on a form to be provided by the department
9 that must include the following information:

10 (a) the applicant's social security number;

11 (b) proof of compliance with workers' compensation laws;

12 (c) proof of compliance with unemployment insurance laws;

13 (d) the I.R.S. employer identification number, if any;

14 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of
15 specialty; and

16 (f) the name and address of:

17 (i) each partner if the applicant is a firm or partnership;

18 (ii) the owner if the applicant is an individual proprietorship;

19 (iii) the corporate officers and registered agent if the applicant is a corporation; or

20 (iv) the manager of a manager-managed limited liability company or the members of a
21 member-managed limited liability company and the registered agent if the applicant is a limited liability
22 company.

23 ~~(2) The information contained in the application is a matter of public record and is open to public~~
24 ~~inspection.~~

25 ~~(3)~~(2) The department may verify the workers' compensation coverage information provided by
26 the applicant in subsection (1)(b), including but not limited to information regarding the coverage of an
27 individual employee of the applicant. If coverage is provided under the laws of another state, the
28 department may notify the other state that the applicant is employing employees in Montana.

29 ~~(4)~~(3) Registration must be denied if:

30 (a) the applicant has been previously registered as a sole proprietor, partnership, limited liability

1 company, or corporation and was a principal or officer of the corporation; and

2 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part
3 7, that was incurred during a previous registration under this chapter."

4

5 **Section 7.** Section 39-9-204, MCA, is amended to read:

6 **"39-9-204. Certificate of registration -- issuance -- duration -- renewal -- suspension.** (1) The
7 department shall issue to the applicant a certificate of registration upon compliance with the registration
8 requirements of this chapter.

9 (2) If the department approves an application, it shall issue a certificate of registration to the
10 applicant. The department shall place the expiration date, as determined by rule, on the certificate. Except
11 as provided in subsection (3), the certificate is valid until the earliest date of:

12 (a) ~~1-year~~ the expiration date, which must be for a period of at least 2 years but less than 3 years;

13 (b) the date that the bond expires; or

14 (c) the date that the workers' compensation or unemployment insurance expires or any applicable
15 exemption terminates.

16 (3) The certificate issued under this section to an independent contractor is invalid on the date that
17 the independent contractor hires employees unless the independent contractor provides proof to the
18 department of workers' compensation coverage for those employees.

19 (4) A construction contractor may supply a short-term bond or insurance policy to bring its
20 registration period to the full 1 year.

21 (5) If a construction contractor's surety bond or other security has an unsatisfied judgment against
22 it or it is canceled, the construction contractor's registration is automatically suspended on the effective
23 date of the impairment or cancellation. The department shall give notice of the suspension to the
24 construction contractor."

25

26 **Section 8.** Section 39-9-206, MCA, is amended to read:

27 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

28 (a) issuance, renewal, and reinstatement of certificates of registration; and

29 (b) changes of name, address, or business structure.

30 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of

1 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
2 include reproduction, travel, per diem, and administrative and legal support costs.

3 (3) The fees charged in subsection (1)(a) may not exceed \$80 a year, prorated for the period for
4 which the registration certificate is issued.

5 (4) The fees collected under this section must be deposited in the state special revenue account
6 to the credit of the department for the administration and enforcement of this chapter.

7 (5) The department shall establish, cooperatively with representatives of the building industry, an
8 industry and consumer information program, funded with 15% of the fees, to educate the building industry
9 about the registration program and to educate the public regarding the hiring of building construction
10 contractors.

11 (6) The fee for a joint application for a certificate of registration and an independent contractor
12 exemption may not exceed the fee charged for a certificate of registration."

13

14 **Section 9.** Section 39-9-207, MCA, is amended to read:

15 **"39-9-207. Registration prerequisite to suit or lien claim -- limiting liability.** (1) A person engaged
16 in the business or acting in the capacity of a construction contractor may not bring or maintain an action
17 in any court of this state for the collection of compensation for the performance of any work or for breach
18 of contract for which registration is required under this chapter without alleging and proving that the
19 construction contractor was a registered construction contractor and held a current and valid certificate of
20 registration at the time that the construction contractor entered the contract for the performance of work.

21 (2) For the purposes of this section, the court may not find a construction contractor in compliance
22 with the registration requirements of this chapter unless:

23 (a) the department has on file the information required by 39-9-202; and

24 (b) the construction contractor has a current bond or other security as required by 39-9-203.

25 (3) In determining whether a construction contractor is in compliance with the registration
26 requirements of this chapter, the court shall consider the length of time during which the construction
27 contractor did not hold a valid certificate of registration.

28 (4) A construction contractor may not bring or maintain a lien claim under Title 71, chapter 3, part
29 5, unless the construction contractor is registered at the time of entering into a contract.

30 (5) A person, including a construction contractor engaging the services of ~~another~~ a registered

1 construction contractor, is not liable as an employer for workers' compensation and unemployment
 2 insurance coverage or for wages and fringe benefits pursuant to 39-3-706 for the other registered
 3 construction contractor or for any employee of the other registered construction contractor if the ~~contractor~~
 4 person verifies ~~with the department~~ that the other construction contractor ~~with whom the contractor is~~
 5 ~~contracting for services~~ is registered as provided under this chapter. Proof of verification is demonstrated
 6 by having a copy of the construction contractor's registration certificate that covers the time period during
 7 which the construction contractor performs the services."

8
 9 **Section 10.** Section 39-9-211, MCA, is amended to read:

10 **"39-9-211. Exemptions.** This chapter does not apply:

11 (1) to an authorized representative of the United States government, the state of Montana, or any
 12 incorporated municipality, county, alternative form of local government, irrigation district, reclamation
 13 district, or other municipal or political corporation or subdivision of this state;

14 (2) to an officer of a court acting within the scope of office;

15 (3) to a public utility operating under the regulations of the public service commission or to a rural
 16 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
 17 incidental to its own business;

18 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to
 19 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine
 20 or mineral deposit ~~when performed by an owner or lessee;~~

21 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not
 22 actually fabricated into and do not become a permanent fixed part of a structure;

23 (6) to the construction, alteration, improvement, or repair carried on within the limits and
 24 boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

25 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into
 26 or consuming them in the performance of the work of the construction contractor;

27 (8) to work or operation on one undertaking or project considered of a casual, minor, or
 28 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
 29 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
 30 does not apply when the work or construction is only a part of a larger or major operation, whether

1 undertaken by the same or a different construction contractor, or in which a division of the operation is
 2 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
 3 or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or
 4 puts out any sign or card or other device that might indicate to the public that the person is a construction
 5 contractor or is qualified to engage in the business of a construction contractor.

6 ~~(9) except when work is performed by a registered contractor,~~ to a ~~construction or operation~~
 7 ~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture,
 8 viticulture, horticulture, or stock or poultry operation;

9 ~~(a)(10) of irrigation and drainage ditches of~~ to an irrigation district or reclamation district;

10 ~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

11 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 12 prevention purposes;

13 ~~(10)(12) to an owner who contracts for a project with~~ work to be performed by a registered
 14 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 15 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 16 promptly selling the improved property;

17 ~~(11)(13) to a person an owner working on the person's owner's property, whether occupied by the~~
 18 ~~person owner or not, and a person working on the person's residence, whether owned by the person or~~
 19 ~~not,~~ but this exemption does not apply to ~~a person an owner who is~~ otherwise covered by this chapter who
 20 constructs an improvement on the ~~person's owner's~~ property with the intention and for the purpose of
 21 promptly selling the improved property, unless the owner has continuously occupied the property as the
 22 owner's primary residence for at least the last 12 months;

23 ~~(12)(14) to owners of commercial properties who use their own employees to do maintenance,~~
 24 ~~repair, and alteration work in or upon their own properties;~~

25 ~~(13)(15) to a licensed architect, or civil or professional engineer, or professional land surveyor,~~
 26 licensed in Montana and acting solely in a professional capacity;

27 ~~(14)(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;~~

28 ~~(15)(17) to a contract security company, licensed under Title 37, chapter 60, operating within the~~
 29 ~~scope of the license; or~~

30 ~~(16)(18) to a person who engages in the activities regulated as an employee of a registered~~

1 construction contractor with wages as the sole compensation or as an employee with wages as the sole
2 compensation;

3 (19) to a person or business, other than an independent contractor, that holds a professional license
4 issued by the state;

5 (20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water
6 well contractor;

7 (21) to an enrolled tribal member or an association, business, corporation, or other entity, at least
8 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
9 within the exterior boundaries of an Indian reservation; or

10 (22) to a person working on the person's own residence, if the residence is owned by a person
11 other than the resident."

12

13 **Section 11.** Section 39-9-301, MCA, is amended to read:

14 **"39-9-301. Business practices -- ~~advertising~~ -- penalty.** (1) Except as provided in 39-9-205, a
15 person who has registered under one name as provided in this chapter may not engage in the business or
16 act in the capacity of a construction contractor under any other name unless that name also is registered
17 under this chapter.

18 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
19 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
20 ~~address as registered under this chapter.~~

21 ~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories,~~
22 ~~excluding telephone books, and all advertising must show the contractor's current registration number.~~
23 ~~However, signs on motor vehicles and on premises signs do not constitute advertising under this section.~~

24 ~~(b) All materials used to directly solicit business from retail customers who are not businesses must~~
25 ~~show a contractor's current registration number. A contractor may not use a false or expired registration~~
26 ~~number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not~~
27 ~~subject to this subsection.~~

28 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
29 ~~be filed provided in 39-9-203.~~

30 ~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with

1 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
 2 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
 3 name and address at all times while engaged in the business or capacity of a construction contractor or in
 4 activities related to a construction contractor.

5 ~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in
 6 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
 7 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
 8 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
 9 special revenue account to the credit of the department for administration and enforcement of this chapter.

10 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
 11 error."

12

13 **Section 12.** Section 39-9-303, MCA, is amended to read:

14 "**39-9-303. Department to compile and update list of registered construction contractors --**
 15 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 16 this chapter and update the list at least bimonthly. The list is public information and must be available to
 17 the public upon request for a reasonable fee.

18 (2) The department shall inform a person, firm, or corporation whether a construction contractor
 19 is registered. The department shall provide the information without charge, except for a reasonable fee for
 20 any copies made."

21

22 **Section 13.** Section 39-9-401, MCA, is amended to read:

23 "**39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any
 24 construction contractor to:

25 ~~(a)~~(1) ~~advertise~~, offer to perform work, submit a bid, or perform work as a construction contractor
 26 without being registered as required by this chapter;

27 ~~(b)~~(2) ~~advertise~~, offer to perform work, submit a bid, or perform work as a construction contractor
 28 when the construction contractor's registration is suspended; or

29 ~~(c)~~(3) transfer a valid registration to an unregistered construction contractor or allow an
 30 unregistered construction contractor to work under a registration issued to another construction contractor.

1 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
 2 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
 3 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 4 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 5 ~~to another contractor is a separate infraction."~~

6
 7 **Section 14.** Section 39-9-402, MCA, is amended to read:

8 **"39-9-402. Violations -- investigations -- citations.** (1) The department shall appoint compliance
 9 inspectors to investigate alleged or apparent violations of this chapter. An authorized compliance inspector,
 10 upon presentation of appropriate credentials, may inspect and investigate worksites at which a construction
 11 contractor had bid or is presently working to determine whether the construction contractor is registered
 12 in accordance with this chapter or rules adopted under 39-9-103 or whether there is a violation of
 13 39-9-401. Upon request of the compliance inspector, a construction contractor or an employee of the
 14 construction contractor shall provide information identifying the construction contractor.

15 (2) If the employee of an unregistered construction contractor is cited by a compliance inspector,
 16 that employee is cited as the agent of the unregistered construction contractor, and issuance of the citation
 17 to the employee is notice to the construction contractor that the construction contractor is in violation of
 18 this chapter. An employee who is cited by a compliance inspector is not liable for any of the alleged
 19 violations contained in the citation unless the employee is also the construction contractor."

20
 21 **Section 15.** Section 39-9-403, MCA, is amended to read:

22 **"39-9-403. Failure to provide information to identifying construction contractor -- misdemeanor.**
 23 Willful refusal to provide information identifying a construction contractor, as required by 39-9-402, is a
 24 misdemeanor."

25
 26 **Section 16.** Section 39-9-404, MCA, is amended to read:

27 **"39-9-404. Restraining orders -- injunctions.** (1) If the authorized compliance inspector, upon
 28 investigation or inspection, reasonably believes that a construction contractor has failed to register in
 29 accordance with this chapter or the rules adopted under 39-9-103, the department may issue an order
 30 immediately restraining further construction work at the worksite by the construction contractor. The order

1 ~~shall~~ must describe the specific violation that necessitated the issuance of the restraining order. The
 2 construction contractor or representative to whom the restraining order is directed may request a hearing
 3 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not stay
 4 the effect of the restraining order.

5 (2) In addition to and after having invoked the powers of restraint vested in the department as
 6 provided in subsection (1), the department, through the attorney general, may petition the district court to
 7 enjoin any activity in violation of this chapter. A prima facie case for issuance of an injunction must be
 8 established by affidavits and supporting documentation that a restraining order was served upon the
 9 construction contractor and that the construction contractor continued to work after service of the order.
 10 Upon the filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate
 11 relief, pending the outcome of enforcement proceedings under this chapter, or to enforce restraining orders
 12 issued by the department. If the construction contractor fails to comply with a court order, the department
 13 shall petition the district court for an order holding the construction contractor in contempt of court and
 14 for any other appropriate relief."
 15

16 **Section 17.** Section 39-9-405, MCA, is amended to read:

17 "**39-9-405. Notice of infraction -- service.** The department may issue a notice of infraction if the
 18 department reasonably believes that the construction contractor required to be registered by this chapter
 19 has failed to do so or has otherwise committed a violation under 39-9-401. A notice of infraction issued
 20 under this section may be personally served on the construction contractor named in the notice by the
 21 department's compliance inspectors or service may be made by certified mail directed to the construction
 22 contractor named in the notice of infraction. If the construction contractor named in the notice of infraction
 23 is a firm or corporation, the notice may be personally served on any ~~employee~~ officer of the firm or
 24 corporation. ~~If a notice of infraction is personally served upon an employee of a firm or corporation, the~~
 25 ~~department shall send a copy of the notice by certified mail within 4 days of service to the contractor if the~~
 26 ~~department is able to obtain the contractor's address."~~

27

28 **Section 18.** Section 39-9-406, MCA, is amended to read:

29 "**39-9-406. Notice of infraction -- form.** The form of the notice of the infraction issued under this
 30 chapter must include a statement:

1 (1) that the notice represents a determination that the infraction has been committed by the
 2 construction contractor named in the notice and that the determination is final unless contested as provided
 3 in this chapter;

4 (2) that the infraction is a civil offense;

5 (3) of the specific violation that necessitated the issuance of the notice of infraction;

6 (4) of the penalty involved if the infraction is established;

7 (5) of the options provided in this chapter for responding to the notice and the procedures
 8 necessary to exercise these options;

9 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a
 10 preponderance of the evidence, that the infraction was committed and that the construction contractor may
 11 subpoena witnesses, including the compliance inspector who issued and served the notice of infraction;

12 (7) signed by the person who has been served with the notice of infraction that the construction
 13 contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

14 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and
 15 may be punished by a fine, or imprisonment in jail, or both; and

16 (9) that the construction contractor's failure to respond to a notice of infraction as promised is a
 17 misdemeanor and may be punished by a fine, or imprisonment in jail, or both."

18
 19 **Section 19.** Section 39-9-407, MCA, is amended to read:

20 **"39-9-407. Notice of infraction -- determination -- appeal -- duty to respond.** (1) Unless contested,
 21 the notice of infraction represents a determination that the construction contractor to whom the notice was
 22 issued committed the infraction.

23 (2) If a party desires to contest the determination, the party shall file a notice of appeal with the
 24 department within ~~20~~ 30 days of the issuance of the notice of infraction. The department shall conduct a
 25 hearing in accordance with the Montana Administrative Procedure Act. The department may conduct the
 26 hearing by telephone or by videoconference.

27 (3) A construction contractor who is issued a notice of infraction shall respond within ~~20~~ 30 days
 28 of the date of issuance of the notice of infraction.

29 (4) If a construction contractor named in the notice does not elect to contest the notice of
 30 infraction, the construction contractor shall pay to the department the amount of the penalty prescribed

1 for the infraction. When payment of the appropriate penalty is received by the department, the department
2 shall make the appropriate entry in its records.

3 (5) If a construction contractor named in the notice elects to contest the notice of infraction, the
4 construction contractor shall respond by filing an answer of protest with the department, specifying the
5 grounds of protest."
6

7 **Section 20.** Section 39-9-408, MCA, is amended to read:

8 **"39-9-408. Notice of infraction -- failure to respond -- refusal to sign -- penalty.** (1) If a
9 construction contractor issued a notice of infraction fails to respond within the prescribed response period,
10 the construction contractor is guilty of a misdemeanor and the department may cause the criminal
11 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
12 in the county where the infraction occurred.

13 (2) After a final determination by the department that an infraction has been committed, a
14 construction contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended
15 pursuant to 39-9-410, and who fails to file an appeal pursuant to 39-9-409 is guilty of a misdemeanor and
16 the department may cause the criminal proceedings to be initiated against the person for prosecution in the
17 lowest court of concurrent jurisdiction in the county in which the infraction occurred.

18 (3) A construction contractor who fails to pay a penalty within 30 days after exhausting appellate
19 remedies pursuant to 39-9-409 is guilty of a misdemeanor and the department may cause the criminal
20 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
21 in the county where the infraction occurred.

22 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to
23 refuse to sign a written promise to respond to the notice.

24 (5) It is a misdemeanor for a construction contractor who has been personally served with a notice
25 of infraction to willfully violate the written promise to respond to a notice of infraction as provided in this
26 chapter, regardless of the ultimate disposition of the infraction."
27

28 **Section 21.** Section 39-9-409, MCA, is amended to read:

29 **"39-9-409. Infraction -- administrative hearing -- procedure -- burden of proof -- order -- appeal.**
30 (1) The department shall conduct a case related to a construction contractor's notice of infraction pursuant

1 to Title 2, chapter 4.

2 (2) The burden of proof is on the department to establish the commission of the infraction by a
3 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes that,
4 at the time the notice was issued, the defendant was registered by the department, was not suspended,
5 or was exempt from registration.

6 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification
7 from the department that the construction contractor named in the notice of infraction was registered, was
8 not suspended, or was exempt from registration at the time the notice of infraction was issued.

9 (4) After consideration of the evidence and argument, the hearings officer shall determine whether
10 the infraction was committed. If it has not been established that the infraction was committed, an order
11 dismissing the notice must be entered in the record of the proceedings. If it has been established that the
12 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the
13 decision and order determining whether the infraction was committed.

14 (5) If it is determined that the infraction was not committed, the hearings officer shall award the
15 construction contractor the reasonable costs incurred in responding to the notice of infraction.

16 ~~(5)(6)~~ An appeal from the hearings officer's determination or order must be to the district court."
17

18 **Section 22.** Section 39-9-410, MCA, is amended to read:

19 "**39-9-410. Infraction -- penalty.** (1) A construction contractor found to have committed an
20 infraction under 39-9-401 must be assessed a penalty of ~~\$150~~ \$100 for each day for each infraction in
21 which the construction contractor conducted business without being registered, beginning with the date
22 the notice of infraction was served to the construction contractor or to the construction contractor's agent.

23 (2) The department may waive, reduce, or suspend the penalty imposed for the infraction only
24 upon a showing of good cause that the penalty would be unduly burdensome to the construction
25 contractor.

26 (3) A penalty collected under this section must be deposited in the state special revenue account
27 to the credit of the department for administration and enforcement of this chapter."
28

29 **Section 23.** Section 39-71-120, MCA, is amended to read:

30 "**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders

1 service in the course of an occupation and:

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

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

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

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

8

9 **NEW SECTION. Section 24. Repealer.** Section 39-9-302, MCA, is repealed.

10

11 **NEW SECTION. Section 25. Effective date.** [This act] is effective July 1, 1997.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0045, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing contractors and contractor registration, amending sections, and providing an effective date.

ASSUMPTIONS:

1. Changing the minimum amount charged for a job (from \$500 to \$2,500) before requiring a contractor to apply for a contractor registration (CR) certificate would reduce the total number of registered contractors and thereby impact fee revenue to the program. The Department of Labor and Industry estimates five percent of current registered contractors would choose not to register with this legislative change, thereby reducing fee revenue by \$28,000 (7,000 registered contractors x 5% = 350 not registering; 350 x \$80 = \$28,000).
2. The contractor registration unit would reduce travel for enforcement purposes by \$28,000.
3. Penalty fees collected from contractor infractions would offset any costs to the department in cases in which it was determined a contractor had not committed an infraction. (Section 21 of introduced bill.)
4. Obtaining an independent contractor exemption becomes an option. (Section 23 of introduced bill.) It is assumed that sixty percent of 7,187 currently exempted independent contractors might choose not to register in future years. Then the independent contractor exemption fee revenue could drop by \$107,800 (7,187 x 60% x \$25 = \$107,800).
5. Funding for the exemption process would revert back to the Workers' Compensation Assessment, state special account (02455), which funded the independent contractor exemption process in the past.

FISCAL IMPACT:

Department of Labor and Industry
Employment Relations Division

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	(28,000)	(28,000)
<u>Funding:</u>		
SSR (Cont Registration-02346)	(28,000)	(28,000)
<u>Revenue:</u>		
Contractor Registration (02346)	(28,000)	(28,000)
IC Exemption (02091)	(107,800)	(107,800)
WC Assessment (02455)	107,800	107,800

Dave Lewis 1-9-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Ric Holden 1-10-97
 RIC HOLDEN, PRIMARY SPONSOR DATE

Fiscal Note for SB0045, as introduced

SB 45

APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

SENATE BILL NO. 45

INTRODUCED BY HOLDEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND CONTRACTOR REGISTRATION; ELIMINATING LAWS GOVERNING CONTRACTORS' BONDS FOR WAGES AND BENEFITS; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF \$50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF \$25; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES AND FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS; AMENDING SECTIONS ~~39-3-703, 39-3-705~~, 39-9-101, 39-9-102, 39-9-201, 39-9-202, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 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, 39-9-410, AND 39-71-120, MCA; REPEALING SECTION SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-203, AND 39-9-302, MCA; AND PROVIDING AN 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 contractor who contracts with any person or entity to do any work or perform any services for the person or entity 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 \$10,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole proprietor, or an independent contractor, or a corporate officer working as an individual without employees; or~~

~~(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. Security is not required if a contractor does not have employees.~~

1 ~~(e) in the name of the state of Montana;~~

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

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

5 ~~(ii) all taxes and contributions due to the state unemployment insurance contributions and workers'~~
6 ~~compensation insurance liability;~~

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

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

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

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

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

18

19 ~~**Section 2.** Section 39-3-705, MCA, is amended to read:~~

20 ~~**"39-3-705. Suit on bond.** (1) Any person, firm, or corporation having a claim against the~~
21 ~~contractor for any of the items referred to in 39-3-703 may bring an action on the surety bond in the~~
22 ~~district court in the county in which the work was performed or in any county that has jurisdiction over the~~
23 ~~contractor.~~

24 ~~(2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon~~
25 ~~the bond or deposit must be commenced by filing the summons and complaint with the clerk of the~~
26 ~~appropriate district court within 1 year from the date of expiration of the certificate of registration that was~~
27 ~~in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing~~
28 ~~the state became due, or the claimed contract work was completed. Service of process in an action against~~
29 ~~the contractor, the contractor's bond, or the deposit must be exclusively by service upon the department.~~
30 ~~Three copies of the summons and complaint and a fee of \$10 for handling costs must be served by certified~~

1 mail upon the department at the time ~~that~~ suit is started. The \$10 fee must be deposited in the state special
 2 revenue fund to the credit of the department. The department shall maintain a record, available for public
 3 inspection, of all suits served. Service is not complete until the department receives the \$10 fee and three
 4 copies of the summons and complaint. The service constitutes service on the registrant and the surety for
 5 suit upon the bond or deposit. The department shall mail the summons and complaint or a copy of the
 6 summons and complaint to the registrant at the address listed in the registrant's application and to the
 7 surety within ~~48~~ 72 hours after it has been received.

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

- 16 (a) ~~labor, including employee benefits;~~
 17 (b) ~~taxes and contributions due to the state; and~~
 18 (c) ~~any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.~~

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

24 (5) ~~A person who filed and served a summons and complaint as required by this section and who~~
 25 ~~has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute~~
 26 ~~upon the security held by the department by serving a certified copy of the unsatisfied final judgment within~~
 27 ~~1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the~~
 28 ~~department shall pay or order to be paid from the deposit, through the district court that rendered the~~
 29 ~~judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must~~
 30 ~~be the order of receipt by the department, but the department has no liability for payment in excess of the~~

1 ~~amount of the deposit."~~

2

3 **Section 1.** Section 39-9-101, MCA, is amended to read:

4 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
5 are competing fairly and in compliance with state laws."

6

7 **Section 2.** Section 39-9-102, MCA, is amended to read:

8 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

9 (1) ~~Contractor~~ Construction contractor means a person, firm, or corporation that:

10 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
11 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
12 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to
13 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
14 structures or works, or the installation or repair of roofing or siding; or

15 (b) in order to do work similar to that described in subsection (1)(a) upon the construction
16 contractor's property, employs members of more than one trade on a single job or under a single building
17 permit, except as otherwise provided.

18 (2) "Department" means the department of labor and industry.

19 ~~(3) "General contractor" means a contractor whose business operations require the use of more~~
20 ~~than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole~~
21 ~~or in part.~~

22 ~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition~~
23 ~~of general contractor.~~

24 ~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor~~
25 ~~registration card that is current on its face."~~

26

27 **Section 3.** Section 39-9-201, MCA, is amended to read:

28 **"39-9-201. Registration required -- prohibited acts -- criminal penalty.** (1) ~~On or before July 1,~~
29 ~~1996, each~~ Each construction contractor shall register with the department.

30 (2) It is a misdemeanor for a construction contractor to:

- 1 (a) advertise, offer to perform work, submit a bid, or perform work as a construction contractor:
- 2 (i) without being registered as required by this chapter; or
- 3 (ii) when the construction contractor's registration is suspended;
- 4 ~~(b) use a false or expired registration number in purchasing or offering to purchase an~~
- 5 ~~advertisement for which a contractor registration number is required; or~~
- 6 ~~(c)~~(b) transfer a valid registration to an unregistered construction contractor to work under a
- 7 registration issued to another construction contractor.

8 (3) The department may cause the criminal proceedings for a misdemeanor action under this

9 chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the

10 infraction occurs."

11

12 **Section 4.** Section 39-9-202, MCA, is amended to read:

13 "**39-9-202. Application for registration -- grounds for denial.** (1) An applicant for registration as

14 a construction contractor shall submit an application under oath on a form to be provided by the department

15 that must include the following information:

- 16 (a) the applicant's social security number;
- 17 (b) proof of compliance with workers' compensation laws;
- 18 (c) proof of compliance with unemployment insurance laws;
- 19 (d) the I.R.S. employer identification number, if any; **AND**
- 20 ~~(e) the type of contracting activity, such as general or specialty, and, if applicable, the type of~~
- 21 ~~specialty; and~~

22 ~~(f)~~(E) the name and address of:

- 23 (i) each partner if the applicant is a firm or partnership;
- 24 (ii) the owner if the applicant is an individual proprietorship;
- 25 (iii) the corporate officers and registered agent if the applicant is a corporation; or
- 26 (iv) the manager of a manager-managed limited liability company or the members of a
- 27 member-managed limited liability company and the registered agent if the applicant is a limited liability
- 28 company.

29 ~~(2) The information contained in the application is a matter of public record and is open to public~~

30 ~~inspection.~~

1 ~~(3)(2)~~ The department may verify the workers' compensation coverage information provided by
 2 the applicant in subsection (1)(b), including but not limited to information regarding the coverage of an
 3 individual employee of the applicant. If coverage is provided under the laws of another state, the
 4 department may notify the other state that the applicant is employing employees in Montana.

5 ~~(4)(3)~~ Registration must be denied if:

6 ~~(a)~~ the applicant has been previously registered as a sole proprietor, partnership, limited liability
 7 company, or corporation and was a principal or officer of the corporation; ~~and~~

8 ~~(b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part~~
 9 ~~7, that was incurred during a previous registration under this chapter."~~

11 **Section 5.** Section 39-9-204, MCA, is amended to read:

12 "**39-9-204. Certificate of registration -- issuance -- duration -- renewal -- suspension.** (1) The
 13 department shall issue to the applicant a certificate of registration upon compliance with the registration
 14 requirements of this chapter.

15 (2) If the department approves an application, it shall issue a certificate of registration to the
 16 applicant. The department shall place the expiration date, as determined by rule, on the certificate. Except
 17 as provided in subsection (3), the certificate is valid until the earliest date of:

18 (a) ~~1-year~~ the expiration date, which must be for a period of at least 2 years but less than 3 years;

19 OR

20 (b) ~~the date that the bond expires; or~~

21 ~~(c)~~ the date that the workers' compensation or unemployment insurance expires or any applicable
 22 exemption terminates.

23 (3) The certificate issued under this section to an independent contractor is invalid on the date that
 24 the independent contractor hires employees unless the independent contractor provides proof to the
 25 department of workers' compensation coverage for those employees.

26 ~~(4) A construction contractor may supply a short term bond or insurance policy to bring its~~
 27 ~~registration period to the full 1 year.~~

28 ~~(5) If a construction contractor's surety bond or other security has an unsatisfied judgment against~~
 29 ~~it or it is canceled, the construction contractor's registration is automatically suspended on the effective~~
 30 ~~date of the impairment or cancellation. The department shall give notice of the suspension to the~~

1 ~~construction contractor."~~

2

3 **Section 6.** Section 39-9-206, MCA, is amended to read:

4 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

5 (a) issuance, renewal, and reinstatement of certificates of registration; and

6 (b) changes of name, address, or business structure.

7 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
8 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
9 include reproduction, travel, per diem, and administrative and legal support costs.

10 (3) The fees charged in subsection (1)(a) may not exceed ~~80 a year, prorated for the period for~~
11 which:

12 (A) \$50 FOR THE INITIAL the registration certificate is issued; OR

13 (B) \$25 FOR THE RENEWAL OR REINSTATEMENT OF A REGISTRATION CERTIFICATE.

14 (4) The fees collected under this section must be deposited in the state special revenue account
15 to the credit of the department for the administration and enforcement of this chapter.

16 (5) The department shall establish, cooperatively with representatives of the building industry, an
17 industry and consumer information program, funded with 15% of the fees, to educate the building industry
18 about the registration program and to educate the public regarding the hiring of building construction
19 contractors.

20 (6) The fee for a joint application for a certificate of registration and an independent contractor
21 exemption may not exceed the fee charged for a certificate of registration."

22

23 **Section 7.** Section 39-9-207, MCA, is amended to read:

24 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ CONTRACTOR REGISTRATION -- limiting**
25 **liability.** (1) ~~A person engaged in the business or acting in the capacity of a construction contractor may~~
26 ~~not bring or maintain an action in any court of this state for the collection of compensation for the~~
27 ~~performance of any work or for breach of contract for which registration is required under this chapter~~
28 ~~without alleging and proving that the construction contractor was a registered construction contractor and~~
29 ~~held a current and valid certificate of registration at the time that the construction contractor entered the~~
30 ~~contract for the performance of work.~~

1 ~~(2) For the purposes of this section, the court may not find a construction contractor in compliance~~
2 ~~with the registration requirements of this chapter unless:~~

3 ~~(a) the department has on file the information required by 39-9-202; and~~

4 ~~(b) the construction contractor has a current bond or other security as required by 39-9-203.~~

5 ~~(3) In determining whether a construction contractor is in compliance with the registration~~
6 ~~requirements of this chapter, the court shall consider the length of time during which the construction~~
7 ~~contractor did not hold a valid certificate of registration.~~

8 ~~(4) A construction contractor may not bring or maintain a lien claim under Title 71, chapter 3, part~~
9 ~~5, unless the construction contractor is registered at the time of entering into a contract.~~

10 ~~(5) A person, including a construction contractor engaging the services of ~~another~~ a registered~~
11 ~~construction contractor, is not liable as an employer UNDER 39-71-405 for workers' compensation and~~
12 ~~unemployment insurance coverage or for wages and fringe benefits pursuant to 39-3-706 for the other~~
13 ~~registered construction contractor or for any employee of the other registered construction contractor if the~~
14 ~~contractor person verifies ~~with the department~~ that the other construction contractor ~~with whom the~~~~
15 ~~contractor is contracting for services is registered as provided under this chapter. Proof of verification is~~
16 ~~demonstrated by having a copy of the construction contractor's registration certificate AT THE INCEPTION~~
17 ~~OF THE CONTRACT that covers the time period during which the construction contractor performs the~~
18 ~~services.~~"

19
20 **Section 8.** Section 39-9-211, MCA, is amended to read:

21 "**39-9-211. Exemptions.** This chapter does not apply:

22 (1) to an authorized representative of the United States government, the state of Montana, or any
23 incorporated municipality, county, alternative form of local government, irrigation district, reclamation
24 district, or other municipal or political corporation or subdivision of this state;

25 (2) to an officer of a court acting within the scope of office;

26 (3) to a public utility operating under the regulations of the public service commission or to a rural
27 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
28 incidental to its own business;

29 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to
30 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine

1 or mineral deposit ~~when performed by an owner or lessee;~~

2 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not
3 actually fabricated into and do not become a permanent fixed part of a structure;

4 (6) to the construction, alteration, improvement, or repair carried on within the limits and
5 boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

6 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into
7 or consuming them in the performance of the work of the construction contractor;

8 (8) to work or operation on one undertaking or project considered of a casual, minor, or
9 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
10 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
11 does not apply when the work or construction is only a part of a larger or major operation, whether
12 undertaken by the same or a different construction contractor, or in which a division of the operation is
13 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
14 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
15 ~~puts out any sign or card or other device that might indicate to the public that the person is a construction~~
16 ~~contractor or is qualified to engage in the business of a construction contractor.~~

17 (9) ~~except when work is performed by a registered contractor, to a construction or operation~~
18 ~~incidental to the construction or repair: farmer or rancher while engaged in a farming, dairying, agriculture,~~
19 ~~viticulture, horticulture, or stock or poultry operation;~~

20 ~~(a)(10) of irrigation and drainage ditches of to an irrigation district or reclamation district;~~

21 ~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

22 ~~(c)(11) to an operation related to clearing or other work upon land in rural districts for fire~~
23 ~~prevention purposes;~~

24 ~~(10)(12) to an owner who contracts for a project with work to be performed by a registered~~
25 ~~construction contractor, but this exemption does not apply to an owner who is otherwise covered by this~~
26 ~~chapter who constructs a residence on the owner's property with the intention and for the purpose of~~
27 ~~promptly selling the improved property;~~

28 ~~(11)(13) to a person an owner working on the person's owner's property, whether occupied by the~~
29 ~~person owner or not, and a person working on the person's residence, whether owned by the person or~~
30 ~~not, but this exemption does not apply to a person an owner who is otherwise covered by this chapter who~~

1 constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of
 2 promptly selling the improved property, unless the owner has continuously occupied the property as the
 3 owner's primary residence for at least the last 12 months;

4 ~~(12)(14)~~ to owners of commercial properties who use their own employees to do maintenance,
 5 repair, and alteration work in or upon their own properties;

6 ~~(13)(15)~~ to a ~~licensed~~ architect, ~~or~~ civil or professional engineer, or professional land surveyor,
 7 licensed in Montana and acting solely in a professional capacity;

8 ~~(14)(16)~~ to an electrician or plumber, licensed in Montana, operating within the scope of the license;

9 ~~(15)(17)~~ to a contract security company, licensed under Title 37, chapter 60, operating within the
 10 scope of the license; ~~or~~

11 ~~(16)(18)~~ to a person who engages in the activities regulated as an employee of a registered
 12 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 13 compensation;

14 ~~(19) to a person or business, other than an independent contractor, that holds a professional license~~
 15 ~~issued by the state~~ TO A PERSON OR ENTITY LICENSED UNDER TITLE 50, CHAPTER 39, TO SELL,
 16 INSTALL, OR SERVICE FIRE SUPPRESSION OR FIRE PROTECTION EQUIPMENT;

17 ~~(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water~~
 18 well contractor;

19 ~~(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least~~
 20 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 21 within the exterior boundaries of an Indian reservation; or

22 ~~(22) TO A CONTRACTOR ENGAGED IN THE LOGGING INDUSTRY WHO BUILDS FOREST ACCESS~~
 23 ROADS FOR THE PURPOSE OF HARVESTING AND TRANSPORTING LOGS FROM FOREST TO MILL; OR

24 ~~(22) (23) to a person working on the person's own residence, if the residence is owned by a person~~
 25 other than the resident."

26
 27 **Section 9.** Section 39-9-301, MCA, is amended to read:

28 "**39-9-301. Business practices -- ~~advertising~~ penalty.** (1) Except as provided in 39-9-205, a
 29 person who has registered under one name as provided in this chapter may not engage in the business or
 30 act in the capacity of a construction contractor under any other name unless that name also is registered

1 under this chapter.

2 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
 3 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
 4 ~~address as registered under this chapter.~~

5 ~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories,~~
 6 ~~excluding telephone books, and all advertising must show the contractor's current registration number.~~
 7 ~~However, signs on motor vehicles and on premises signs do not constitute advertising under this section.~~

8 ~~(b) All materials used to directly solicit business from retail customers who are not businesses must~~
 9 ~~show a contractor's current registration number. A contractor may not use a false or expired registration~~
 10 ~~number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not~~
 11 ~~subject to this subsection.~~

12 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
 13 ~~be filed provided in 39-9-203.~~

14 ~~(5)(2)~~ A construction contractor may not falsify a registration number and use it in connection with
 15 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
 16 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
 17 name and address at all times while engaged in the business or capacity of a construction contractor or in
 18 activities related to a construction contractor.

19 ~~(6)(3)~~ (a) The finding of a violation of this section by the department at a hearing held in
 20 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
 21 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
 22 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
 23 special revenue account to the credit of the department for administration and enforcement of this chapter.

24 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
 25 error."

26

27 **Section 10.** Section 39-9-303, MCA, is amended to read:

28 **"39-9-303. Department to compile and update list of registered construction contractors --**
 29 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 30 this chapter and update the list at least bimonthly. The list is public information and must be available to

1 the public upon request for a reasonable fee.

2 (2) The department shall inform a person, firm, or corporation whether a construction contractor
3 is registered. The department shall provide the information without charge, except for a reasonable fee for
4 any copies made."

5

6 **Section 11.** Section 39-9-401, MCA, is amended to read:

7 "**39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any
8 construction contractor to:

9 ~~(a)(1) advertise,~~ offer to perform work, submit a bid, or perform work as a construction contractor
10 without being registered as required by this chapter;

11 ~~(b)(2) advertise,~~ offer to perform work, submit a bid, or perform work as a construction contractor
12 when the construction contractor's registration is suspended; or

13 ~~(c)(3)~~ transfer a valid registration to an unregistered construction contractor or allow an
14 unregistered construction contractor to work under a registration issued to another construction contractor.

15 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
16 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
17 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
18 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
19 ~~to another contractor is a separate infraction."~~

20

21 **Section 12.** Section 39-9-402, MCA, is amended to read:

22 "**39-9-402. Violations -- investigations -- citations.** (1) The department shall appoint compliance
23 inspectors to investigate alleged or apparent violations of this chapter. An authorized compliance inspector,
24 upon presentation of appropriate credentials, may inspect and investigate worksites at which a construction
25 contractor had bid or is presently working to determine whether the construction contractor is registered
26 in accordance with this chapter or rules adopted under 39-9-103 or whether there is a violation of
27 39-9-401. Upon request of the compliance inspector, a construction contractor or an employee of the
28 construction contractor shall provide information identifying the construction contractor.

29 (2) If the employee of an unregistered construction contractor is cited by a compliance inspector,
30 that employee is cited as the agent of the unregistered construction contractor, and issuance of the citation

1 to the employee is notice to the construction contractor that the construction contractor is in violation of
2 this chapter. An employee who is cited by a compliance inspector is not liable for any of the alleged
3 violations contained in the citation unless the employee is also the construction contractor."

4
5 **Section 13.** Section 39-9-403, MCA, is amended to read:

6 **"39-9-403. Failure to provide information ~~to~~ identifying construction contractor -- misdemeanor.**
7 Willful refusal to provide information identifying a construction contractor, as required by 39-9-402, is a
8 misdemeanor."

9
10 **Section 14.** Section 39-9-404, MCA, is amended to read:

11 **"39-9-404. Restraining orders -- injunctions.** (1) If the authorized compliance inspector, upon
12 investigation or inspection, reasonably believes that a construction contractor has failed to register in
13 accordance with this chapter or the rules adopted under 39-9-103, the department may issue an order
14 immediately restraining further construction work at the worksite by the construction contractor. The order
15 ~~shall~~ must describe the specific violation that necessitated the issuance of the restraining order. The
16 construction contractor or representative to whom the restraining order is directed may request a hearing
17 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not stay
18 the effect of the restraining order.

19 (2) In addition to and after having invoked the powers of restraint vested in the department as
20 provided in subsection (1), the department, through the attorney general, may petition the district court to
21 enjoin any activity in violation of this chapter. A prima facie case for issuance of an injunction must be
22 established by affidavits and supporting documentation that a restraining order was served upon the
23 construction contractor and that the construction contractor continued to work after service of the order.
24 Upon the filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate
25 relief, pending the outcome of enforcement proceedings under this chapter, or to enforce restraining orders
26 issued by the department. If the construction contractor fails to comply with a court order, the department
27 shall petition the district court for an order holding the construction contractor in contempt of court and
28 for any other appropriate relief."

29
30 **Section 15.** Section 39-9-405, MCA, is amended to read:

1 **"39-9-405. Notice of infraction -- service.** The department may issue a notice of infraction if the
 2 department reasonably believes that the construction contractor required to be registered by this chapter
 3 has failed to do so or has otherwise committed a violation under 39-9-401. A notice of infraction issued
 4 under this section may be personally served on the construction contractor named in the notice by the
 5 department's compliance inspectors or service may be made by certified mail directed to the construction
 6 contractor named in the notice of infraction. If the construction contractor named in the notice of infraction
 7 is a firm or corporation, the notice may be personally served on any ~~employee~~ officer of the firm or
 8 corporation. ~~If a notice of infraction is personally served upon an employee of a firm or corporation, the~~
 9 ~~department shall send a copy of the notice by certified mail within 4 days of service to the contractor if the~~
 10 ~~department is able to obtain the contractor's address."~~

11

12 **Section 16.** Section 39-9-406, MCA, is amended to read:

13 **"39-9-406. Notice of infraction -- form.** The form of the notice of the infraction issued under this
 14 chapter must include a statement:

15 (1) that the notice represents a determination that the infraction has been committed by the
 16 construction contractor named in the notice and that the determination is final unless contested as provided
 17 in this chapter;

18 (2) that the infraction is a civil offense;

19 (3) of the specific violation that necessitated the issuance of the notice of infraction;

20 (4) of the penalty involved if the infraction is established;

21 (5) of the options provided in this chapter for responding to the notice and the procedures
 22 necessary to exercise these options;

23 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a
 24 preponderance of the evidence, that the infraction was committed and that the construction contractor may
 25 subpoena witnesses, including the compliance inspector who issued and served the notice of infraction;

26 (7) signed by the person who has been served with the notice of infraction that the construction
 27 contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

28 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and
 29 may be punished by a fine, or imprisonment in jail, or both; and

30 (9) that the construction contractor's failure to respond to a notice of infraction as promised is a

1 misdemeanor and may be punished by a fine, or imprisonment in jail, or both."

2

3 **Section 17.** Section 39-9-407, MCA, is amended to read:

4 **"39-9-407. Notice of infraction -- determination -- appeal -- duty to respond.** (1) Unless contested,
5 the notice of infraction represents a determination that the construction contractor to whom the notice was
6 issued committed the infraction.

7 (2) If a party desires to contest the determination, the party shall file a notice of appeal with the
8 department within ~~20~~ 30 days of the issuance of the notice of infraction. The department shall conduct a
9 hearing in accordance with the Montana Administrative Procedure Act. The department may conduct the
10 hearing by telephone or by videoconference.

11 (3) A construction contractor who is issued a notice of infraction shall respond within ~~20~~ 30 days
12 of the date of issuance of the notice of infraction.

13 (4) If a construction contractor named in the notice does not elect to contest the notice of
14 infraction, the construction contractor shall pay to the department the amount of the penalty prescribed
15 for the infraction. When payment of the appropriate penalty is received by the department, the department
16 shall make the appropriate entry in its records.

17 (5) If a construction contractor named in the notice elects to contest the notice of infraction, the
18 construction contractor shall respond by filing an answer of protest with the department, specifying the
19 grounds of protest."

20

21 **Section 18.** Section 39-9-408, MCA, is amended to read:

22 **"39-9-408. Notice of infraction -- failure to respond -- refusal to sign -- penalty.** (1) If a
23 construction contractor issued a notice of infraction fails to respond within the prescribed response period,
24 the construction contractor is guilty of a misdemeanor and the department may cause the criminal
25 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
26 in the county where the infraction occurred.

27 (2) After a final determination by the department that an infraction has been committed, a
28 construction contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended
29 pursuant to 39-9-410, and who fails to file an appeal pursuant to 39-9-409 is guilty of a misdemeanor and
30 the department may cause the criminal proceedings to be initiated against the person for prosecution in the

1 lowest court of concurrent jurisdiction in the county in which the infraction occurred.

2 (3) A construction contractor who fails to pay a penalty within 30 days after exhausting appellate
3 remedies pursuant to 39-9-409 is guilty of a misdemeanor and the department may cause the criminal
4 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
5 in the county where the infraction occurred.

6 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to
7 refuse to sign a written promise to respond to the notice.

8 (5) It is a misdemeanor for a construction contractor who has been personally served with a notice
9 of infraction to willfully violate the written promise to respond to a notice of infraction as provided in this
10 chapter, regardless of the ultimate disposition of the infraction."
11

11

12 **Section 19.** Section 39-9-409, MCA, is amended to read:

13 **"39-9-409. Infraction -- administrative hearing -- procedure -- burden of proof -- order -- appeal.**

14 (1) The department shall conduct a case related to a construction contractor's notice of infraction pursuant
15 to Title 2, chapter 4.

16 (2) The burden of proof is on the department to establish the commission of the infraction by a
17 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes that,
18 at the time the notice was issued, the defendant was registered by the department, was not suspended,
19 or was exempt from registration.

20 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification
21 from the department that the construction contractor named in the notice of infraction was registered, was
22 not suspended, or was exempt from registration at the time the notice of infraction was issued.

23 (4) After consideration of the evidence and argument, the hearings officer shall determine whether
24 the infraction was committed. If it has not been established that the infraction was committed, an order
25 dismissing the notice must be entered in the record of the proceedings. If it has been established that the
26 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the
27 decision and order determining whether the infraction was committed.

28 (5) If it is determined that the infraction was not committed, the hearings officer shall award the
29 construction contractor the reasonable costs incurred in responding to the notice of infraction.

30 ~~(5)~~(6) An appeal from the hearings officer's determination or order must be to the district court."

1 **Section 20.** Section 39-9-410, MCA, is amended to read:

2 "**39-9-410. Infraction -- penalty.** (1) A construction contractor found to have committed an
3 infraction under 39-9-401 must be assessed a penalty of ~~\$150~~ \$100 for each day for each infraction in
4 which the construction contractor conducted business without being registered, beginning with the date
5 the notice of infraction was served to the construction contractor or to the construction contractor's agent.

6 (2) The department may waive, reduce, or suspend the penalty imposed for the infraction only
7 upon a showing of good cause that the penalty would be unduly burdensome to the construction
8 contractor.

9 (3) A penalty collected under this section must be deposited in the state special revenue account
10 to the credit of the department for administration and enforcement of this chapter."

11

12 **Section 21.** Section 39-71-120, MCA, is amended to read:

13 "**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
14 service in the course of an occupation and:

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

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

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

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

21

22 NEW SECTION. **Section 22. Repealer.** ~~Section~~ SECTIONS 39-3-701, 39-3-702, 39-3-703,
23 39-3-705, 39-3-706, 39-9-203, AND 39-9-302, MCA, is ARE repealed.

24

25 NEW SECTION. **Section 23. Effective date.** [This act] is effective July 1, 1997.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0045, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing contractors and contractor registration, amending sections, and providing an effective date.

ASSUMPTIONS:

1. Removing various bonding responsibilities from the Contractor Registration Unit, Department of Labor and Industry, and changing from an annual to "no less than two, but no more than three" year intervals in certification renewal responsibilities, would reduce program staff by 2.00 FTE, (1.00 FTE compliance specialist, grade 13, at \$28,657 per year and 1.00 FTE clerical support staff, grade 8, at \$19,970 per year). Associated operating costs would also be reduced.
2. Changing the minimum amount charged from \$500 to \$2,500 per job before requiring a contractor to apply for a contractor registration (CR) certificate could reduce the total number of registered contractors. This would further impact fee revenue. An estimated two percent of current registered contractors would choose not to register with this legislative change. (7,000 registered contractors x 2% = 140 not registering, with 6,860 remaining as registered contractors)
3. It is assumed that only 10 percent (686 contractors) are new applicants each year, and that 90 percent (6,174 contractors) are renewals for fiscal 1998. Fee income for the contractor registration program would be (686x50) + (6,174x25) = \$188,650 in fiscal 1998. The fiscal 1998 budget request for the Contractor Registration Unit as included in the Governor's Executive Budget was based on expected contractor registration revenues of \$608,861. SB45, as amended, would reduce the fee revenue by \$420,211. (\$608,861-\$188,650)
4. By fiscal 1999 the majority of construction contractors holding a valid two-to-three year registration certificate would not need to reapply. The only contractor registration revenue by fiscal 1999 would be new applicants. It is estimated that there would be 686 new applicants. (686 x \$50 = \$34,300) The fiscal 1999 budget request for the Contractor Registration Unit, based on expected contractor registration revenues, was \$598,588. It is estimated that SB 45, as amended, would reduce the fee revenue in fiscal 1999 by \$564,288. (\$598,588-\$34,300)
5. By fiscal 1999, staff would be reassigned from the clerical duties of registering construction contractors to the field for compliance efforts.
6. Although there is a projected decrease of revenue, the majority of contractor registration functions would still continue. Because there is insufficient funds in the account, it is assumed the funding of these functions would be general fund in the amount of \$364,819 in fiscal 1998 and \$508,454 in fiscal 1999.
7. Penalty fees collected from contractor infractions would offset any costs to the Department of Labor and Industry in cases in which it was determined a contractor had not committed an infraction. (Section 19).
8. Although obtaining an Independent Contractor (IC) exemption becomes an option (Section 21), it is anticipated that sufficient current IC exemption holders (16,800) would still seek the IC status and that IC exemption fee revenue would meet projected program expenses. If IC exemption fee revenue does not meet projected program expenses, it is assumed that the Department of Labor and Industry would utilize workers' compensation assessment revenue to cover IC appropriated functions as has been done historically.

(Continued)

Unsigned 2-13-97

Dave Lewis 2.13.97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

RIC HOLDEN, PRIMARY SPONSOR DATE

Fiscal Note for SB0045, second reading

AMENDED SB 45 #2

FISCAL IMPACT:

Employment Relations Division:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	(2.00)	(2.00)
Personal Services	(48,627)	(48,627)
Operating	(6,765)	(7,207)
Equipment	<u>0</u>	<u>0</u>
Total	(55,392)	(55,834)
 <u>Funding:</u>		
General Fund (01)	364,819	508,454
SSR (Cont Registration-02346)	<u>(420,211)</u>	<u>(564,288)</u>
Total	(55,392)	(55,834)
 <u>Revenues:</u>		
Contractor Registration (02346)	(420,211)	(564,288)
 <u>Net Impact:</u>		
General Fund (01)	(364,819)	(508,454)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The functions of implementing and enforcing this section of law (Title 39, chapter 71, part 2) are given to the Department of Labor and Industry, yet sufficient funding is not identified.

TECHNICAL NOTES:

Section 6(2) is inconsistent with Section 6(3). Subpart (2) states that the "fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter." Yet subpart (3) limits the fee amounts.

SENATE BILL NO. 45
INTRODUCED BY HOLDEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND CONTRACTOR REGISTRATION; ELIMINATING LAWS GOVERNING CONTRACTORS' BONDS FOR WAGES AND BENEFITS; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF \$50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF \$25; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES AND FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A \$25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; AMENDING SECTIONS ~~39-3-703, 39-3-705,~~ 39-9-101, 39-9-102, 39-9-201, 39-9-202, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 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, 39-9-410, ~~AND 39-71-120, AND 39-71-401,~~ MCA; REPEALING SECTION SECTIONS ~~39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-203, AND 39-9-302,~~ MCA; AND PROVIDING AN 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 contractor who contracts with any person or entity to do any work or perform any services for the person or entity 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 \$10,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole proprietor, or an independent contractor, or a corporate officer working as an individual without employees; or~~

~~(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~~

1 contractor or \$4,000 for a specialty contractor and may not exceed \$25,000 for any contractor. Security
 2 is not required if a contractor does not have employees.

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

4 (d) for the purpose of guaranteeing:

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

7 (ii) all taxes and contributions due to the state unemployment insurance contributions and workers'
 8 compensation insurance liability;

9 (iii) payment to persons furnishing labor;

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

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

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

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

20
 21 **Section 2.** Section 39-3-705, MCA, is amended to read:

22 "**39-3-705. Suit on bond.** (1) Any person, firm, or corporation having a claim against the
 23 contractor for any of the items referred to in 39-3-703 may bring an action on the surety bond in the
 24 district court in the county in which the work was performed or in any county that has jurisdiction over the
 25 contractor.

26 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon
 27 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the
 28 appropriate district court within 1 year from the date of expiration of the certificate of registration that was
 29 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing
 30 the state became due, or the claimed contract work was completed. Service of process in an action against

1 ~~the contractor, the contractor's bond, or the deposit must be exclusively by service upon the department.~~
2 ~~Three copies of the summons and complaint and a fee of \$10 for handling costs must be served by certified~~
3 ~~mail upon the department at the time that suit is started. The \$10 fee must be deposited in the state special~~
4 ~~revenue fund to the credit of the department. The department shall maintain a record, available for public~~
5 ~~inspection, of all suits served. Service is not complete until the department receives the \$10 fee and three~~
6 ~~copies of the summons and complaint. The service constitutes service on the registrant and the surety for~~
7 ~~suit upon the bond or deposit. The department shall mail the summons and complaint or a copy of the~~
8 ~~summons and complaint to the registrant at the address listed in the registrant's application and to the~~
9 ~~surety within 48 72 hours after it has been received.~~

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

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

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

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

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

26 ~~(5) A person who filed and served a summons and complaint as required by this section and who~~
27 ~~has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute~~
28 ~~upon the security held by the department by serving a certified copy of the unsatisfied final judgment within~~
29 ~~1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the~~
30 ~~department shall pay or order to be paid from the deposit, through the district court that rendered the~~

1 ~~judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must~~
 2 ~~be the order of receipt by the department, but the department has no liability for payment in excess of the~~
 3 ~~amount of the deposit."~~

4
 5 **Section 1.** Section 39-9-101, MCA, is amended to read:

6 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
 7 are competing fairly and in compliance with state laws."

8
 9 **Section 2.** Section 39-9-102, MCA, is amended to read:

10 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

11 (1) ~~"Contractor~~ Construction contractor" means a person, firm, or corporation that:

12 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
 13 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
 14 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to
 15 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
 16 structures or works, or the installation or repair of roofing or siding; or

17 (b) in order to do work similar to that described in subsection (1)(a) upon the construction
 18 contractor's property, employs members of more than one trade on a single job or under a single building
 19 permit, except as otherwise provided.

20 (2) "Department" means the department of labor and industry.

21 ~~(3) "General contractor" means a contractor whose business operations require the use of more~~
 22 ~~than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole~~
 23 ~~or in part.~~

24 ~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition~~
 25 ~~of general contractor.~~

26 ~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor~~
 27 ~~registration card that is current on its face."~~

28
 29 **Section 3.** Section 39-9-201, MCA, is amended to read:

30 **"39-9-201. Registration required -- prohibited acts -- criminal penalty.** (1) ~~On or before July 1,~~

1 ~~1996, each~~ Each construction contractor shall register with the department.

2 (2) It is a misdemeanor for a construction contractor to:

3 (a) advertise, offer to perform work, submit a bid, or perform work as a construction contractor:

4 (i) without being registered as required by this chapter; or

5 (ii) when the construction contractor's registration is suspended;

6 ~~(b) use a false or expired registration number in purchasing or offering to purchase an~~
7 ~~advertisement for which a contractor registration number is required; or~~

8 ~~(c)~~(b) transfer a valid registration to an unregistered construction contractor to work under a
9 registration issued to another construction contractor.

10 (3) The department may cause the criminal proceedings for a misdemeanor action under this
11 chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the
12 infraction occurs."

13

14 **Section 4.** Section 39-9-202, MCA, is amended to read:

15 **"39-9-202. Application for registration -- grounds for denial.** (1) An applicant for registration as
16 a construction contractor shall submit an application under oath on a form to be provided by the department
17 that must include the following information:

18 (a) the applicant's social security number;

19 (b) proof of compliance with workers' compensation laws;

20 (c) proof of compliance with unemployment insurance laws;

21 (d) the I.R.S. employer identification number, if any; AND

22 ~~(e) the type of contracting activity, such as general or specialty, and, if applicable, the type of~~
23 ~~specialty; and~~

24 ~~(f)~~(E) the name and address of:

25 (i) each partner if the applicant is a firm or partnership;

26 (ii) the owner if the applicant is an individual proprietorship;

27 (iii) the corporate officers and registered agent if the applicant is a corporation; or

28 (iv) the manager of a manager-managed limited liability company or the members of a
29 member-managed limited liability company and the registered agent if the applicant is a limited liability
30 company.

1 ~~(2) The information contained in the application is a matter of public record and is open to public~~
2 ~~inspection.~~

3 ~~(3)(2)~~ The department may verify the workers' compensation coverage information provided by
4 the applicant in subsection (1)(b), including but not limited to information regarding the coverage of an
5 individual employee of the applicant. If coverage is provided under the laws of another state, the
6 department may notify the other state that the applicant is employing employees in Montana.

7 ~~(4)(3)~~ Registration must be denied if:

8 ~~(a)~~ the applicant has been previously registered as a sole proprietor, partnership, limited liability
9 company, or corporation and was a principal or officer of the corporation; ~~and~~

10 ~~(b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part~~
11 ~~7, that was incurred during a previous registration under this chapter."~~

12
13 **Section 5.** Section 39-9-204, MCA, is amended to read:

14 "**39-9-204. Certificate of registration -- issuance -- duration -- renewal —suspension.** (1) The
15 department shall issue to the applicant a certificate of registration upon compliance with the registration
16 requirements of this chapter.

17 (2) If the department approves an application, it shall issue a certificate of registration to the
18 applicant. The department shall place the expiration date, as determined by rule, on the certificate. Except
19 as provided in subsection (3), the certificate is valid until the earliest date of:

20 (a) ~~1-year~~ the expiration date, which must be for a period of at least 2 years but less than 3 years;

21 OR

22 (b) ~~the date that the bond expires; or~~

23 ~~(c)~~ the date that the workers' compensation or unemployment insurance expires or any applicable
24 exemption terminates.

25 (3) The certificate issued under this section to an independent contractor is invalid on the date that
26 the independent contractor hires employees unless the independent contractor provides proof to the
27 department of workers' compensation coverage for those employees.

28 ~~(4) A construction contractor may supply a short term bond or insurance policy to bring its~~
29 ~~registration period to the full 1 year.~~

30 ~~(5) If a construction contractor's surety bond or other security has an unsatisfied judgment against~~

1 ~~it or it is canceled, the construction contractor's registration is automatically suspended on the effective~~
 2 ~~date of the impairment or cancellation. The department shall give notice of the suspension to the~~
 3 ~~construction contractor."~~

4
 5 **Section 6.** Section 39-9-206, MCA, is amended to read:

6 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

7 (a) issuance, renewal, and reinstatement of certificates of registration; and

8 (b) changes of name, address, or business structure.

9 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
 10 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
 11 include reproduction, travel, per diem, and administrative and legal support costs.

12 (3) The fees charged in subsection (1)(a) may not exceed ~~80 a year, prorated for the period for~~
 13 ~~which:~~

14 ~~(A) \$50 FOR THE INITIAL the registration certificate is issued; OR~~

15 ~~(B) \$25 FOR THE RENEWAL OR REINSTATEMENT OF A REGISTRATION CERTIFICATE.~~

16 (4) The fees collected under this section must be deposited in the state special revenue account
 17 to the credit of the department for the administration and enforcement of this chapter.

18 (5) The department shall establish, cooperatively with representatives of the building industry, an
 19 industry and consumer information program, funded with 15% of the fees, to educate the building industry
 20 about the registration program and to educate the public regarding the hiring of building construction
 21 contractors.

22 (6) The fee for a joint application for a certificate of registration and an independent contractor
 23 exemption may not exceed the fee charged for a certificate of registration."

24
 25 **Section 7.** Section 39-9-207, MCA, is amended to read:

26 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ CONTRACTOR REGISTRATION -- limiting**
 27 **liability.** (1) ~~A person engaged in the business or acting in the capacity of a construction contractor may~~
 28 ~~not bring or maintain an action in any court of this state for the collection of compensation for the~~
 29 ~~performance of any work or for breach of contract for which registration is required under this chapter~~
 30 ~~without alleging and proving that the construction contractor was a registered construction contractor and~~

1 ~~held a current and valid certificate of registration at the time that the construction contractor entered the~~
 2 ~~contract for the performance of work.~~

3 ~~(2) For the purposes of this section, the court may not find a construction contractor in compliance~~
 4 ~~with the registration requirements of this chapter unless:~~

5 ~~(a) the department has on file the information required by 39-9-202; and~~

6 ~~(b) the construction contractor has a current bond or other security as required by 39-9-203.~~

7 ~~(3) In determining whether a construction contractor is in compliance with the registration~~
 8 ~~requirements of this chapter, the court shall consider the length of time during which the construction~~
 9 ~~contractor did not hold a valid certificate of registration.~~

10 ~~(4) A construction contractor may not bring or maintain a lien claim under Title 71, chapter 3, part~~
 11 ~~5, unless the construction contractor is registered at the time of entering into a contract.~~

12 ~~(5) A person, including a construction contractor engaging the services of another a registered~~
 13 ~~construction contractor, is not liable as an employer UNDER 39-71-405 for workers' compensation and~~
 14 ~~unemployment insurance coverage or for wages and fringe benefits pursuant to 39-3-706 for the other~~
 15 ~~registered construction contractor or for any employee of the other registered construction contractor if the~~
 16 ~~contractor person verifies with the department that the other construction contractor with whom the~~
 17 ~~contractor is contracting for services is registered as provided under this chapter. Proof of verification is~~
 18 ~~demonstrated by having a copy of the construction contractor's registration certificate AT THE INCEPTION~~
 19 ~~OF THE CONTRACT that covers the time period during which the construction contractor performs the~~
 20 ~~services.~~"

21
 22 **Section 8.** Section 39-9-211, MCA, is amended to read:

23 **"39-9-211. Exemptions.** This chapter does not apply:

24 (1) to an authorized representative of the United States government, the state of Montana, or any
 25 incorporated municipality, county, alternative form of local government, irrigation district, reclamation
 26 district, or other municipal or political corporation or subdivision of this state;

27 (2) to an officer of a court acting within the scope of office;

28 (3) to a public utility operating under the regulations of the public service commission or to a rural
 29 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
 30 incidental to its own business;

1 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to
 2 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine
 3 or mineral deposit ~~when performed by an owner or lessee;~~

4 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not
 5 actually fabricated into and do not become a permanent fixed part of a structure;

6 (6) to the construction, alteration, improvement, or repair carried on within the limits and
 7 boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

8 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into
 9 or consuming them in the performance of the work of the construction contractor;

10 (8) to work or operation on one undertaking or project considered of a casual, minor, or
 11 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
 12 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
 13 does not apply when the work or construction is only a part of a larger or major operation, whether
 14 undertaken by the same or a different construction contractor, or in which a division of the operation is
 15 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
 16 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
 17 ~~puts out any sign or card or other device that might indicate to the public that the person is a construction~~
 18 ~~contractor or is qualified to engage in the business of a construction contractor.~~

19 (9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation~~
 20 ~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture,
 21 viticulture, horticulture, or stock or poultry operation;

22 ~~(a)(10) of irrigation and drainage ditches of to~~ an irrigation district or reclamation district;

23 ~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

24 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 25 prevention purposes;

26 ~~(10)(12) to an owner who contracts for a project with~~ work to be performed by a registered
 27 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 28 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 29 promptly selling the improved property;

30 ~~(11)(13) to a person an owner~~ working on the ~~person's~~ owner's property, whether occupied by the

1 ~~person owner~~ or not, and ~~a person working on the person's residence, whether owned by the person or~~
 2 ~~not~~, but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who
 3 constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of
 4 promptly selling the improved property, unless the owner has continuously occupied the property as the
 5 owner's primary residence for at least the last 12 months;

6 ~~(12)~~(14) to owners of commercial properties who use their own employees to do maintenance,
 7 repair, and alteration work in or upon their own properties;

8 ~~(13)~~(15) to a ~~licensed~~ architect, ~~or~~ civil or professional engineer, or professional land surveyor,
 9 licensed in Montana and acting solely in a professional capacity;

10 ~~(14)~~(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

11 ~~(15)~~(17) to a contract security company, licensed under Title 37, chapter 60, operating within the
 12 scope of the license; ~~or~~

13 ~~(16)~~(18) to a person who engages in the activities regulated as an employee of a registered
 14 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 15 compensation;

16 ~~(19) to a person or business, other than an independent contractor, that holds a professional license~~
 17 ~~issued by the state~~ TO A PERSON OR ENTITY LICENSED UNDER TITLE 50, CHAPTER 39, TO SELL,
 18 INSTALL, OR SERVICE FIRE SUPPRESSION OR FIRE PROTECTION EQUIPMENT;

19 ~~(20)~~ to a water well contractor licensed under Title 37, chapter 43, performing the work of a water
 20 well contractor;

21 ~~(21)~~ to an enrolled tribal member or an association, business, corporation, or other entity, at least
 22 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 23 within the exterior boundaries of an Indian reservation; or

24 ~~(22)~~ TO A CONTRACTOR ENGAGED IN THE LOGGING INDUSTRY WHO BUILDS FOREST ACCESS
 25 ROADS FOR THE PURPOSE OF HARVESTING AND TRANSPORTING LOGS FROM FOREST TO MILL; OR

26 ~~(22)~~ (23) to a person working on the person's own residence, if the residence is owned by a person
 27 other than the resident."

28
 29 **Section 9.** Section 39-9-301, MCA, is amended to read:

30 **"39-9-301. Business practices -- advertising -- penalty.** (1) Except as provided in 39-9-205, a

1 person who has registered under one name as provided in this chapter may not engage in the business or
 2 act in the capacity of a construction contractor under any other name unless that name also is registered
 3 under this chapter.

4 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
 5 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
 6 ~~address as registered under this chapter.~~

7 ~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories,~~
 8 ~~excluding telephone books, and all advertising must show the contractor's current registration number.~~
 9 ~~However, signs on motor vehicles and on premises signs do not constitute advertising under this section.~~

10 ~~(b) All materials used to directly solicit business from retail customers who are not businesses must~~
 11 ~~show a contractor's current registration number. A contractor may not use a false or expired registration~~
 12 ~~number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not~~
 13 ~~subject to this subsection.~~

14 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
 15 ~~be filed provided in 39-9-203.~~

16 ~~(5)(2)~~ A construction contractor may not falsify a registration number and use it in connection with
 17 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
 18 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
 19 name and address at all times while engaged in the business or capacity of a construction contractor or in
 20 activities related to a construction contractor.

21 ~~(6)(3)~~ (a) The finding of a violation of this section by the department at a hearing held in
 22 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
 23 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
 24 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
 25 special revenue account to the credit of the department for administration and enforcement of this chapter.

26 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
 27 error."

28
 29 **Section 10.** Section 39-9-303, MCA, is amended to read:

30 **"39-9-303. Department to compile and update list of registered construction contractors --**

1 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 2 this chapter and update the list at least bimonthly. The list is public information and must be available to
 3 the public upon request for a reasonable fee.

4 (2) The department shall inform a person, firm, or corporation whether a construction contractor
 5 is registered. The department shall provide the information without charge, except for a reasonable fee for
 6 any copies made."

7
 8 **Section 11.** Section 39-9-401, MCA, is amended to read:

9 **"39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any
 10 construction contractor to:

11 ~~{a}~~(1) ~~advertise,~~ offer to perform work, submit a bid, or perform work as a construction contractor
 12 without being registered as required by this chapter;

13 ~~{b}~~(2) ~~advertise,~~ offer to perform work, submit a bid, or perform work as a construction contractor
 14 when the construction contractor's registration is suspended; or

15 ~~{c}~~(3) transfer a valid registration to an unregistered construction contractor or allow an
 16 unregistered construction contractor to work under a registration issued to another construction contractor.

17 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
 18 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
 19 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 20 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 21 ~~to another contractor is a separate infraction."~~

22
 23 **Section 12.** Section 39-9-402, MCA, is amended to read:

24 **"39-9-402. Violations -- investigations -- citations.** (1) The department shall appoint compliance
 25 inspectors to investigate alleged or apparent violations of this chapter. An authorized compliance inspector,
 26 upon presentation of appropriate credentials, may inspect and investigate worksites at which a construction
 27 contractor had bid or is presently working to determine whether the construction contractor is registered
 28 in accordance with this chapter or rules adopted under 39-9-103 or whether there is a violation of
 29 39-9-401. Upon request of the compliance inspector, a construction contractor or an employee of the
 30 construction contractor shall provide information identifying the construction contractor.

1 (2) If the employee of an unregistered construction contractor is cited by a compliance inspector,
2 that employee is cited as the agent of the unregistered construction contractor, and issuance of the citation
3 to the employee is notice to the construction contractor that the construction contractor is in violation of
4 this chapter. An employee who is cited by a compliance inspector is not liable for any of the alleged
5 violations contained in the citation unless the employee is also the construction contractor."

6
7 **Section 13.** Section 39-9-403, MCA, is amended to read:

8 **"39-9-403. Failure to provide information to identifying construction contractor -- misdemeanor.**
9 Willful refusal to provide information identifying a construction contractor, as required by 39-9-402, is a
10 misdemeanor."

11
12 **Section 14.** Section 39-9-404, MCA, is amended to read:

13 **"39-9-404. Restraining orders -- injunctions.** (1) If the authorized compliance inspector, upon
14 investigation or inspection, reasonably believes that a construction contractor has failed to register in
15 accordance with this chapter or the rules adopted under 39-9-103, the department may issue an order
16 immediately restraining further construction work at the worksite by the construction contractor. The order
17 shall must describe the specific violation that necessitated the issuance of the restraining order. The
18 construction contractor or representative to whom the restraining order is directed may request a hearing
19 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not stay
20 the effect of the restraining order.

21 (2) In addition to and after having invoked the powers of restraint vested in the department as
22 provided in subsection (1), the department, through the attorney general, may petition the district court to
23 enjoin any activity in violation of this chapter. A prima facie case for issuance of an injunction must be
24 established by affidavits and supporting documentation that a restraining order was served upon the
25 construction contractor and that the construction contractor continued to work after service of the order.
26 Upon the filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate
27 relief, pending the outcome of enforcement proceedings under this chapter, or to enforce restraining orders
28 issued by the department. If the construction contractor fails to comply with a court order, the department
29 shall petition the district court for an order holding the construction contractor in contempt of court and
30 for any other appropriate relief."

1 **Section 15.** Section 39-9-405, MCA, is amended to read:

2 "**39-9-405. Notice of infraction -- service.** The department may issue a notice of infraction if the
3 department reasonably believes that the construction contractor required to be registered by this chapter
4 has failed to do so or has otherwise committed a violation under 39-9-401. A notice of infraction issued
5 under this section may be personally served on the construction contractor named in the notice by the
6 department's compliance inspectors or service may be made by certified mail directed to the construction
7 contractor named in the notice of infraction. If the construction contractor named in the notice of infraction
8 is a firm or corporation, the notice may be personally served on any ~~employee~~ officer of the firm or
9 corporation. ~~If a notice of infraction is personally served upon an employee of a firm or corporation, the~~
10 ~~department shall send a copy of the notice by certified mail within 4 days of service to the contractor if the~~
11 ~~department is able to obtain the contractor's address."~~

12
13 **Section 16.** Section 39-9-406, MCA, is amended to read:

14 "**39-9-406. Notice of infraction -- form.** The form of the notice of the infraction issued under this
15 chapter must include a statement:

16 (1) that the notice represents a determination that the infraction has been committed by the
17 construction contractor named in the notice and that the determination is final unless contested as provided
18 in this chapter;

19 (2) that the infraction is a civil offense;

20 (3) of the specific violation that necessitated the issuance of the notice of infraction;

21 (4) of the penalty involved if the infraction is established;

22 (5) of the options provided in this chapter for responding to the notice and the procedures
23 necessary to exercise these options;

24 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a
25 preponderance of the evidence, that the infraction was committed and that the construction contractor may
26 subpoena witnesses, including the compliance inspector who issued and served the notice of infraction;

27 (7) signed by the person who has been served with the notice of infraction that the construction
28 contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

29 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and
30 may be punished by a fine, or imprisonment in jail, or both; and

1 (9) that the construction contractor's failure to respond to a notice of infraction as promised is a
2 misdemeanor and may be punished by a fine, or imprisonment in jail, or both."

3
4 **Section 17.** Section 39-9-407, MCA, is amended to read:

5 **"39-9-407. Notice of infraction -- determination -- appeal -- duty to respond.** (1) Unless contested,
6 the notice of infraction represents a determination that the construction contractor to whom the notice was
7 issued committed the infraction.

8 (2) If a party desires to contest the determination, the party shall file a notice of appeal with the
9 department within ~~20~~ 30 days of the issuance of the notice of infraction. The department shall conduct a
10 hearing in accordance with the Montana Administrative Procedure Act. The department may conduct the
11 hearing by telephone or by videoconference.

12 (3) A construction contractor who is issued a notice of infraction shall respond within ~~20~~ 30 days
13 of the date of issuance of the notice of infraction.

14 (4) If a construction contractor named in the notice does not elect to contest the notice of
15 infraction, the construction contractor shall pay to the department the amount of the penalty prescribed
16 for the infraction. When payment of the appropriate penalty is received by the department, the department
17 shall make the appropriate entry in its records.

18 (5) If a construction contractor named in the notice elects to contest the notice of infraction, the
19 construction contractor shall respond by filing an answer of protest with the department, specifying the
20 grounds of protest."

21
22 **Section 18.** Section 39-9-408, MCA, is amended to read:

23 **"39-9-408. Notice of infraction -- failure to respond -- refusal to sign -- penalty.** (1) If a
24 construction contractor issued a notice of infraction fails to respond within the prescribed response period,
25 the construction contractor is guilty of a misdemeanor and the department may cause the criminal
26 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
27 in the county where the infraction occurred.

28 (2) After a final determination by the department that an infraction has been committed, a
29 construction contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended
30 pursuant to 39-9-410, and who fails to file an appeal pursuant to 39-9-409 is guilty of a misdemeanor and

1 the department may cause the criminal proceedings to be initiated against the person for prosecution in the
2 lowest court of concurrent jurisdiction in the county in which the infraction occurred.

3 (3) A construction contractor who fails to pay a penalty within 30 days after exhausting appellate
4 remedies pursuant to 39-9-409 is guilty of a misdemeanor and the department may cause the criminal
5 proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction
6 in the county where the infraction occurred.

7 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to
8 refuse to sign a written promise to respond to the notice.

9 (5) It is a misdemeanor for a construction contractor who has been personally served with a notice
10 of infraction to willfully violate the written promise to respond to a notice of infraction as provided in this
11 chapter, regardless of the ultimate disposition of the infraction."
12

13 **Section 19.** Section 39-9-409, MCA, is amended to read:

14 **"39-9-409. Infraction -- administrative hearing -- procedure -- burden of proof -- order -- appeal.**

15 (1) The department shall conduct a case related to a construction contractor's notice of infraction pursuant
16 to Title 2, chapter 4.

17 (2) The burden of proof is on the department to establish the commission of the infraction by a
18 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes that,
19 at the time the notice was issued, the defendant was registered by the department, was not suspended,
20 or was exempt from registration.

21 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification
22 from the department that the construction contractor named in the notice of infraction was registered, was
23 not suspended, or was exempt from registration at the time the notice of infraction was issued.

24 (4) After consideration of the evidence and argument, the hearings officer shall determine whether
25 the infraction was committed. If it has not been established that the infraction was committed, an order
26 dismissing the notice must be entered in the record of the proceedings. If it has been established that the
27 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the
28 decision and order determining whether the infraction was committed.

29 (5) If it is determined that the infraction was not committed, the hearings officer shall award the
30 construction contractor the reasonable costs incurred in responding to the notice of infraction.

1 ~~(5)~~(6) An appeal from the hearings officer's determination or order must be to the district court."

2

3 **Section 20.** Section 39-9-410, MCA, is amended to read:

4 "**39-9-410. Infraction -- penalty.** (1) A construction contractor found to have committed an
5 infraction under 39-9-401 must be assessed a penalty of ~~\$150~~ \$100 for each day for each infraction in
6 which the construction contractor conducted business without being registered, beginning with the date
7 the notice of infraction was served to the construction contractor or to the construction contractor's agent.

8 (2) The department may waive, reduce, or suspend the penalty imposed for the infraction only
9 upon a showing of good cause that the penalty would be unduly burdensome to the construction
10 contractor.

11 (3) A penalty collected under this section must be deposited in the state special revenue account
12 to the credit of the department for administration and enforcement of this chapter."

13

14 **Section 21.** Section 39-71-120, MCA, is amended to read:

15 "**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
16 service in the course of an occupation and:

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

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

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

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

23

24 **SECTION 22. SECTION 39-71-401, MCA, IS AMENDED TO READ:**

25 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
26 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
27 all employees, as defined in 39-71-118. An employer who has any employee in service under any
28 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
29 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
30 Compensation Act is subject to and bound by the compensation plan that has been elected by the

1 employer.

2 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
3 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

4 (a) household and domestic employment;

5 (b) casual employment as defined in 39-71-116;

6 (c) employment of a dependent member of an employer's family for whom an exemption may be
7 claimed by the employer under the federal Internal Revenue Code;

8 (d) employment of sole proprietors, working members of a partnership, or working members of a
9 member-managed limited liability company, except as provided in subsection (3);

10 (e) employment of a broker or salesman performing under a license issued by the board of realty
11 regulation;

12 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

13 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
14 under the laws of the United States;

15 (h) employment of a person performing services in return for aid or sustenance only, except
16 employment of a volunteer under 67-2-105;

17 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
18 work is included in and subject to the provisions of this chapter;

19 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
20 event, unless the person is otherwise employed by a school district;

21 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
22 if the person performing the services or a parent or guardian of the person performing the services in the
23 case of a minor has acknowledged in writing that the person performing the services and the services are
24 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
25 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
26 "newspaper carrier":

27 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
28 bundles; but

29 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
30 carries or delivers papers.

- 1 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);
- 2 (m) a person who is employed by an enrolled tribal member or an association, business,
3 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
4 business is conducted solely within the exterior boundaries of an Indian reservation;
- 5 (n) employment of a jockey performing under a license issued by the board of horseracing from the
6 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
7 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
8 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- 9 (o) employment of an employer's spouse for whom an exemption based on marital status may be
10 claimed by the employer under 26 U.S.C. 7703;
- 11 (p) a person who performs services as a petroleum land professional. As used in this subsection,
12 a "petroleum land professional" is a person who:
- 13 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
14 negotiating a business agreement for the exploration or development of minerals;
- 15 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
16 than on an hourly wage basis; and
- 17 (iii) performs all services as an independent contractor pursuant to a written contract.
- 18 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
19 liability company who qualifies under one or more of the following provisions:
- 20 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
21 limited liability company and does not receive any pay from the corporation or the limited liability company
22 for performance of the duties;
- 23 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
24 limited liability company;
- 25 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
26 or owns 20% or more of the limited liability company; or
- 27 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
28 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
29 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.
- 30 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a

1 member-managed limited liability company who represents to the public that the person is an independent
2 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
3 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

4 (b) The application must be made in accordance with the rules adopted by the department. There
5 is ~~no~~ a \$25 fee for the initial application. Any subsequent application renewal must be accompanied by a
6 \$25 application fee. The application fee must be deposited in the administration fund established in
7 39-71-201 to offset the costs of administering the program.

8 (c) When an application is approved by the department, it is conclusive as to the status of an
9 independent contractor and
10 precludes the applicant from obtaining benefits under this chapter.

11 (d) The exemption, if approved, remains in effect for ~~1 year~~ 3 years following the date of the
12 department's approval. To maintain the independent contractor status, an independent contractor shall
13 ~~annually~~ every 3 years submit a renewal application. A renewal application must be submitted for all
14 independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and
15 the \$25 renewal application fee must be received by the department at least 30 days prior to the
16 anniversary date of the previously approved exemption.

17 (e) A person who makes a false statement or misrepresentation concerning that person's status
18 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
19 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
20 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

21 (f) If the department denies the application for exemption, the applicant may contest the denial by
22 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
23 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
24 the procedure established in 39-51-2403 and 39-51-2404.

25 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
26 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
27 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
28 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
29 manner:

30 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by

1 delivering the notice to the board of directors of the corporation or to the management organization of the
2 manager-managed limited liability company; or

3 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
4 delivering the notice to the board of directors of the corporation or to the management organization of the
5 manager-managed limited liability company and to the insurer.

6 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
7 the employer shall again serve notice to its insurer and to its board of directors or the management
8 organization of the manager-managed limited liability company if the employer elects to be bound.

9 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
10 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
11 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
12 exemption from coverage.

13 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
14 are normally posted, informing employees about the employer's current provision of workers' compensation
15 insurance. A workplace is any location where an employee performs any work-related act in the course of
16 employment, regardless of whether the location is temporary or permanent, and includes the place of
17 business or property of a third person while the employer has access to or control over the place of
18 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
19 The sign must be provided by the department, distributed through insurers or directly by the department,
20 and posted by employers in accordance with rules adopted by the department. An employer who purposely
21 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
22

23 NEW SECTION. Section 23. Repealer. Section SECTIONS 39-3-701, 39-3-702, 39-3-703,
24 39-3-705, 39-3-706, 39-9-203, AND 39-9-302, MCA, is ARE repealed.

25
26 NEW SECTION. Section 24. Effective date. [This act] is effective July 1, 1997.

27 -END-