

HOUSE BILL NO. 63

INTRODUCED BY K. SWANSON

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT MODERNIZING AND REVISING LICENSING REQUIREMENTS AND REGULATION OF PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, ENGINEER INTERNS, LAND SURVEYOR INTERNS, AND BUSINESSES OFFERING ENGINEERING AND LAND SURVEYING SERVICES; AMENDING SECTIONS 37-67-101, 37-67-103, 37-67-202, 37-67-312, 37-67-313, 37-67-314, AND 37-67-331, MCA; REPEALING SECTIONS 37-67-302, 37-67-303, 37-67-305, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-320, AND 37-67-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1763.

(2) "Branch office" means any office or location where business is conducted that is not the headquarters, main office, home office, or other primary location of a sole proprietorship, firm, partnership, or corporation for purposes of regulation under [section 13].

~~(2)~~(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3)~~(4) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

~~(4)~~(5) (a) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, ~~but excludes,~~

(b) The term does not include the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey

1 system.

2 ~~(5)(6)~~ "Land surveyor intern" means a person who has qualified for, taken, and passed an examination
3 on the basic disciplines of land surveying, as provided in this chapter.

4 ~~(6)(7)~~ (a) "Practice of engineering" means:

5 (i) any service or creative work the adequate performance of which requires engineering education,
6 training, and experience in the application of special knowledge of the mathematical, physical, and engineering
7 sciences to the services or creative work as consultation, investigation, evaluation, planning and design of
8 engineering works and systems, planning the use of water, teaching of advanced engineering subjects,
9 engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings
10 and specifications;

11 (ii) any of the functions described in subsection ~~(6)(a)(i)~~ (7)(a)(i) that embrace the services or work, either
12 public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work
13 systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic,
14 pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

15 (b) The term includes other professional services necessary to the planning, progress, and completion
16 of any engineering services.

17 (c) The term does not include the work ordinarily performed by persons who operate or maintain
18 machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

19 ~~(7)(8)~~ "Practice of land surveying" means any service or work, the performance of which requires the
20 application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

21 (a) the principles of property boundary law to the recovery and preservation of evidence pertaining to
22 earlier land surveys;

23 (b) teaching of land surveying subjects;

24 (c) measurement and allocation of lines, angles, elevations, and coordinate systems;

25 (d) location of natural and constructed features in the air, on the surface of the earth, within underground
26 workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

27 (e) monumenting of property boundaries;

28 (f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets
29 and roads in subdivisions;

30 (g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and

1 (h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or
 2 boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of
 3 any of the fixed works embraced within the practice of engineering.

4 ~~(9)~~(9) "Professional engineer" means a person who, by reason of special knowledge and use of the
 5 mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and
 6 design acquired by engineering education and engineering experience, is qualified to practice engineering and
 7 who has been licensed as a professional engineer by the board.

8 ~~(9)~~(10) "Professional land surveyor" means a person who:

9 (a) has been licensed as a land surveyor by the board;

10 (b) is a professional specialist in the technique, analysis, and application of measuring land;

11 (c) is skilled and educated in the principles of mathematically related physical and applied sciences,
 12 relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

13 (d) is engaged in the practice of land surveying.

14 ~~(10)~~(11) "Responsible charge" means direct charge and control and personal supervision either of
 15 engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally
 16 assume responsible charge under this chapter."

17

18 **Section 2.** Section 37-67-103, MCA, is amended to read:

19 **"37-67-103. Exemptions.** The following are exempt from ~~coverage~~ licensure under this chapter:

20 (1) the practice of any other legally recognized professions or trades;

21 (2) the mere execution of work by a contractor, as distinguished from its planning or design or the
 22 supervision of the construction of work as a lead supervisor or superintendent;

23 (3) the work of an employee or a subordinate of a person holding a license under this chapter or an
 24 employee of a person practicing lawfully under this chapter if the work does not include final engineering or land
 25 surveying designs or decisions and is done under the direct supervision of a person holding a license under this
 26 chapter or a person practicing lawfully under this chapter;

27 (4) the practice of professional engineering by licensed architects when the practice is purely incidental
 28 to their practice of architecture."

29

30 **Section 3.** Section 37-67-202, MCA, is amended to read:

1 **"37-67-202. Rulemaking.** The board may adopt rules, ~~including rules of procedure,~~ reasonably
2 necessary for the proper performance of its duties and the regulation of the proceedings before it."

3
4 NEW SECTION. Section 4. Application -- contents -- fees. An application must include a completed
5 form that must be accompanied by a nonrefundable application fee prescribed by the board and all other required
6 supplemental documents and information. The form must be approved by the department.

7
8 NEW SECTION. Section 5. Qualifications of applicant for examination and licensure as
9 **professional engineer.** (1) An applicant who meets any of the following sets of requirements must be admitted
10 to the principles and practices of engineering examination:

11 (a) a baccalaureate degree in engineering or engineering technology in a board-approved curriculum,
12 passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record
13 of at least 4 years of progressive experience under the supervision of a licensed professional engineer, and
14 references as required by the board;

15 (b) a master's degree in engineering or engineering technology in a board-approved curriculum, passage
16 of the fundamentals of engineering examination, certification as an engineer intern, a specific record of at least
17 4 years of progressive experience under the supervision of a licensed professional engineer, and references as
18 required by the board;

19 (c) a baccalaureate degree in an engineering, engineering technology, or other science curriculum,
20 passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record
21 of at least 20 years of experience on engineering projects that indicate to the board that the applicant is
22 competent to practice engineering, with at least 10 years of that experience under the supervision of a licensed
23 professional engineer, and references as required by the board;

24 (d) a doctoral degree in engineering from an institution with an engineering program approved by the
25 board, passage of the fundamentals of engineering examination, certification as an engineer intern, a specific
26 record of at least 2 years of progressive experience on engineering projects of a grade and character that indicate
27 to the board that the applicant is competent to practice engineering, and references as required by the board; or

28 (e) a doctoral degree in engineering from an institution with an engineering program approved by the
29 board, a specific record of at least 4 years of progressive experience on engineering projects that indicate to the
30 board that the applicant is competent to practice engineering, and references as required by the board.

1 (2) Upon passage of the principles and practices of engineering examination, an applicant must be
2 granted a license to practice engineering in this state.

3
4 **NEW SECTION. Section 6. Qualifications of applicant for certification as engineer intern.** An
5 applicant who meets any of the following sets of requirements must be granted a certificate as an engineer intern:

6 (1) a baccalaureate or master's degree in engineering or engineering technology in a curriculum
7 approved by the board, passage of the fundamentals of engineering examination, and references as required by
8 the board; or

9 (2) a baccalaureate degree in a science curriculum other than a board-approved engineering or
10 engineering technology curriculum, passage of the fundamentals of engineering examination, a specific record
11 of at least 4 years of progressive experience under the supervision of a licensed professional engineer, and
12 references as required by the board. An applicant approved for certification pursuant to this subsection is eligible
13 for licensure as a professional engineer only under [section 5(3)].

14 (3) Certification as an engineer intern does not authorize the holder to practice as a professional
15 engineer.

16
17 **NEW SECTION. Section 7. Qualifications of applicant for examination and licensure as**
18 **professional land surveyor.** (1) An applicant who meets any of the following sets of requirements must be
19 admitted to the principles and practices of surveying examination and the Montana state-specific land surveyor
20 examination:

21 (a) a baccalaureate degree in land surveying that meets the board-approved land surveying curriculum,
22 passage of the fundamentals of surveying examination, at least 4 years of combined office and field experience
23 in land surveying under the direct supervision of a licensed professional land surveyor of which at least 3 years
24 must be progressive experience on land surveying projects, and references and exhibits of land surveying
25 projects as required by the board;

26 (b) an associate degree in land surveying that meets the board-approved land surveying curriculum,
27 passage of the fundamentals of surveying examination, at least 6 years of combined office and field experience
28 in land surveying under the direct supervision of a licensed professional land surveyor of which at least 4 1/2
29 years must be progressive experience on land surveying projects, and references and exhibits of land surveying
30 projects as required by the board;

1 (c) a baccalaureate degree with a minor in land surveying that meets the board-approved land surveying
2 curriculum, passage of the fundamentals of surveying examination, at least 6 years of combined office and field
3 experience in land surveying under the direct supervision of a licensed professional land surveyor of which at
4 least 4 1/2 years must be progressive experience on land surveying projects, and references and exhibits of land
5 surveying projects as required by the board; or

6 (d) before October 1, 2022, passage of the fundamentals of surveying examination, at least 10 years
7 of combined office and field experience in land surveying under the direct supervision of a licensed professional
8 land surveyor of which at least 6 years must be progressive experience on land surveying projects, and
9 references and exhibits of land surveying projects as required by the board.

10 (2) Upon passage of both examinations, the applicant must be granted a license to practice land
11 surveying in this state.

12

13 **NEW SECTION. Section 8. Qualifications of applicant for examination and certification as land**
14 **surveyor intern.** (1) An applicant who meets any of the following sets of requirements must be admitted to the
15 fundamentals of surveying examination:

16 (a) a baccalaureate degree in land surveying that meets the board-approved land surveying curriculum,
17 passage of the fundamentals of surveying examination, and references as required by the board;

18 (b) an associate degree in land surveying that meets the board-approved land surveying curriculum,
19 passage of the fundamentals of surveying examination, and references as required by the board;

20 (c) a baccalaureate degree with a minor in land surveying that meets the board-approved land surveying
21 curriculum, passage of the fundamentals of surveying examination, and references as required by the board; or

22 (d) before October 1, 2022, passage of the fundamentals of surveying examination, at least 6 years of
23 combined office and field experience in land surveying under the direct supervision of a licensed professional land
24 surveyor of which at least 4 1/2 years must be progressive experience in charge of land surveying projects, and
25 references and exhibits as required by the board.

26 (2) Upon passage of the fundamentals of surveying examination, an applicant must be granted a
27 certificate as a Montana land surveyor intern.

28 (3) Certification as a land surveyor intern does not authorize the holder to practice as a professional land
29 surveyor.

30

1 NEW SECTION. **Section 9. Examinations -- fees -- third-party services.** (1) Examinations will be
 2 at times and places established by the board or by a third-party examination services provider. The board
 3 recognizes the following examinations for licensure or certification:

- 4 (a) the fundamentals of engineering examination;
 5 (b) the principles and practices of engineering examination;
 6 (c) the fundamentals of surveying examination;
 7 (d) the principles and practices of surveying examination; and
 8 (e) the Montana state-specific land surveyor examination.

9 (2) The fees for examinations shall be set by the board or by a third party contracted by the board to
 10 provide examination services. The board may charge a fee for reexamination, a rescheduling of an examination,
 11 or an additional examination not required for licensure or certification.

12 (3) The board may use a third party to provide examination and grading services.

13 (4) The board reserves the right to require applicants to meet all requirements for licensure or
 14 certification prior to being admitted to an exam but may waive this requirement as part of an agreement with a
 15 third-party examination services provider.

16 (5) All examination fees are nonrefundable.

17
 18 **Section 10.** Section 37-67-312, MCA, is amended to read:

19 **"37-67-312. Licensure of professional engineers without examination by comity or endorsement.**

20 ~~(1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by~~
 21 ~~a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign~~
 22 ~~country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard~~
 23 ~~not lower than that specified in the applicable registration act in effect in this state at the time the certificate was~~
 24 ~~issued, may upon application be licensed without further examination.~~

25 ~~———(2) A person holding a certificate of qualification issued by the committee on national engineering~~
 26 ~~certification of the national council of examiners for engineering and surveying and whose qualifications meet the~~
 27 ~~requirements of this chapter may upon application be licensed without further examination.~~

28 ~~———(3) A person holding a license or certificate of registration to engage in the practice of engineering in~~
 29 ~~another state, territory, or possession of the United States, the District of Columbia, or any foreign country may~~
 30 ~~be issued a license in this state if the person applies in the manner required by the board, meets the qualifications~~

1 provided in ~~37-67-306 [section 5]~~, and ~~has taken and passed the examinations provided for in 37-67-306 and~~
 2 ~~37-67-311 has passed the principles and practices of engineering examination.~~ The experience requirements of
 3 ~~37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant~~
 4 ~~is competent to practice engineering.~~ An applicant whose initial licensure in another state does not meet the
 5 experience requirements of [section 5] must be required to demonstrate 2 years of postlicensure experience for
 6 each year of prelicensure deficiency."

7

8 **Section 11.** Section 37-67-313, MCA, is amended to read:

9 **"37-67-313. ~~Comity consideration for land surveyors from other states~~ Licensure of professional**
 10 **land surveyors by comity.** (1) ~~A person holding a certificate of registration to engage in the practice of land~~
 11 ~~surveying issued by a proper authority of a state, territory, or possession of the United States or the District of~~
 12 ~~Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a~~
 13 ~~standard not lower than that specified in the applicable registration act in effect in this state at the time the~~
 14 ~~certificate was issued, will be given comity consideration. However, the person may be asked to meet the~~
 15 ~~conditions for taking examinations and to take them as the board considers necessary to determine the person's~~
 16 ~~qualifications. In any event, the person shall pass a written examination that includes questions on laws,~~
 17 ~~procedures, and practices pertaining to the practice of land surveying in this state.~~

18 ~~———(2) A person holding a license or certificate of registration to engage in the practice of land surveying in~~
 19 ~~another state, territory, or possession of the United States, the District of Columbia, or any foreign country may~~
 20 ~~be issued a license in this state if the person applies in the manner required by the board, meets the qualifications~~
 21 ~~provided in 37-67-309 [section 7], has taken and passed the examinations provided for in 37-67-309 and~~
 22 ~~37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and~~
 23 ~~practices pertaining to the practice of land surveying in this state~~ and has passed the principles and practices of
 24 surveying examination and the Montana state-specific land surveyor examination. The experience requirements
 25 of ~~37-67-309 [section 7]~~ may be met with experience gained after initial licensure that indicates to the board that
 26 the applicant is competent to practice land surveying. An applicant whose initial licensure in another state does
 27 not meet the experience requirements of [section 7] must be required to demonstrate 2 years of postlicensure
 28 experience for each year of prelicensure deficiency."

29

30 **Section 12.** Section 37-67-314, MCA, is amended to read:

1 **"37-67-314. Issuance of licenses -- seal of professional engineer or professional land surveyor**

2 ~~--enrollment card for interns.~~ (1) The department shall issue to an applicant who, in the opinion of the board,
3 has met the requirements of this chapter a license ~~giving the licensee proper authority~~ authorizing the applicant
4 to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of
5 engineering or land surveying projects in this state. The license for a professional engineer must carry the
6 designation "professional engineer" and for a professional land surveyor; "professional land surveyor". ~~It must~~
7 give and must include the full name and serial license number of the licensee ~~and must be signed by the~~
8 ~~presiding officer and the secretary under the seal of the board.~~

9 ~~(2) A license is prima facie evidence that the named person is entitled to all rights, privileges, and~~
10 ~~responsibilities of a professional engineer or professional land surveyor while the license remains unrevoked or~~
11 ~~unexpired.~~

12 ~~(3) Each licensee may, upon licensure, obtain a seal of a design authorized by the board, bearing the~~
13 ~~licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans,~~
14 ~~specifications, plats, drawings, reports, design information, and calculations prepared by a licensee must be~~
15 ~~signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. After the~~
16 ~~expiration of a license, it is unlawful for the licensee whose license has lapsed to affix or permit the seal and~~
17 ~~signature or seal facsimile to be affixed to any:~~

18 ~~—— (a) plans, specifications, plats, drawings, reports, design information, or calculations; or~~

19 ~~—— (b) projects for which the licensee was not in responsible charge.~~

20 ~~(4) The department shall issue to any applicant who, in the opinion of the board, has met the~~
21 ~~requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card~~
22 ~~must indicate that the applicant's name and status has been recorded with the board. The enrollment card does~~
23 ~~not authorize the holder to practice as a professional engineer or professional land surveyor.~~

24 (2) Each licensee may, upon licensure, obtain a seal of a design authorized by the board. The licensee
25 shall sign, date, and seal professional or technical documents created in the practice of professional engineering
26 or professional land surveying.

27 (3) A license is prima facie evidence that the named person is entitled to all rights, privileges, and
28 responsibilities of a professional engineer or professional land surveyor while the license remains valid.

29 (4) It is unlawful for a licensee whose license has expired to sign or seal any professional or technical
30 document or be in responsible charge of a professional engineering or professional land surveying project."

1
2 **NEW SECTION. Section 13. Certificate of authorization.** (1) A business entity registered with the
3 Montana secretary of state:

4 (a) shall obtain a certificate of authorization from the board before engaging in the practice of
5 professional engineering or professional land surveying; and

6 (b) may engage in the practice of professional engineering or professional land surveying in this state
7 if at least one employee of the business entity is licensed by the board and identified as being in responsible
8 charge of professional engineering or professional land surveying work performed in this state.

9 (2) A business entity with one or more branch offices or business locations in Montana shall apply for
10 a certificate of authorization for the main office and list each branch office or business location and at least one
11 employee of the business entity who is licensed by the board and identified as being in responsible charge of
12 professional engineering or professional land surveying work performed in this state.

13 (3) A sole proprietor who is not required to register with the Montana secretary of state is not required
14 to apply for a certificate of authorization.

15
16 **NEW SECTION. Section 14. Emeritus status.** On October 1, 2015, any licensee previously approved
17 for emeritus status under this chapter becomes an inactive licensee subject to rules of the board regarding
18 inactive licensee status.

19
20 **Section 15.** Section 37-67-331, MCA, is amended to read:

21 **"37-67-331. Revocation, suspension, or refusal to renew license restriction, or limitation of**
22 **license -- grounds -- procedure -- reinstatement.** (1) The board may reprimand a licensee or revoke, suspend,
23 or ~~refuse to renew~~ restrict or limit the license of a licensee found responsible for:

24 (a) ~~fraud or deceit in obtaining a license;~~

25 (b) ~~(1) gross negligence, incompetency, or misconduct in the practice of professional engineering or~~
26 ~~professional land surveying as a licensed professional engineer or professional land surveyor;~~

27 (c) ~~a felony;~~

28 (d) ~~(2) a violation of rules for professional conduct for professional engineers and professional land~~
29 ~~surveyors adopted by the board; or~~

30 (e) ~~(3) failing to comply with the Corner Recordation Act if the person is a professional land surveyor~~ state

1 laws and rules pertaining to the practice of professional engineering or professional land surveying.

2 ~~(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct~~
 3 ~~against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them,~~
 4 ~~and filed with the department. The charges must be investigated by the board. For purposes of investigation~~
 5 ~~under this section, the board may require that a licensee meet with the board.~~

6 ~~————(3) The board may require a licensee to take a written or oral examination, or both, in a proceeding to~~
 7 ~~reprimand the licensee or to revoke, suspend, or refuse to renew the license.~~

8 ~~————(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the~~
 9 ~~board shall reprimand the licensee or suspend, refuse to renew, or revoke the license of the licensed professional~~
 10 ~~engineer or professional land surveyor.~~

11 ~~————(5) The board, for reasons it considers sufficient, may reissue a license to a person whose license has~~
 12 ~~been revoked if five or more members of the board vote in favor of the reissuance."~~

13
 14 NEW SECTION. Section 16. Repealer. The following sections of the Montana Code Annotated are
 15 repealed:

- 16 37-67-302. Practice without a license a public nuisance.
 17 37-67-303. Application -- contents -- examination -- fees.
 18 37-67-305. General qualifications of applicants for licensure as professional engineer or certification as
 19 engineer intern.
 20 37-67-306. Qualifications of applicant for licensure as professional engineer.
 21 37-67-307. Qualifications of applicant for registration as engineer intern.
 22 37-67-308. General qualifications of applicants for licensure as professional land surveyor or certification as
 23 land surveyor intern.
 24 37-67-309. Qualifications of applicant for licensure as professional land surveyor.
 25 37-67-310. Qualifications of applicant for certification as land surveyor intern.
 26 37-67-311. Examinations -- fees -- third-party services.
 27 37-67-320. Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions.
 28 37-67-321. Emeritus status.

29
 30 NEW SECTION. Section 17. Codification instruction. [Sections 4 through 9, 13, and 14] are intended

1 to be codified as an integral part of Title 37, chapter 67, part 3, and the provisions of Title 37, chapter 67, part 3,
2 apply to [sections 4 through 9, 13, and 14].

3

4 NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

5

- END -