



Montana Department of
LABOR & INDUSTRY
Business Standards Division

ECONOMIC AFFAIRS IC
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EXHIBIT 13

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Rep. Tom Berry, Chair
Economic Affairs Interim Committee
Montana Legislature
State Capitol
Helena, MT 59620

Subject: Response to HB525 Questions re: Board of Professional Engineers and Professional Land Surveyors

Chairman Berry and Members of the Committee:

Below are the responses to the questions your committee has posed to the Montana Board of Professional Engineers and Professional Land Surveyors relating to HB 525:

1. What is the public health, safety, or welfare rationale for licensing and regulating your profession/occupation?

Professional engineers have a direct and immediate impact on public health, safety and welfare as they are responsible for designing the physical components of Montana's infrastructure. Likewise, professional land surveyors directly impact the public as their measurements and analysis of the ever-changing landscape allow for safe and proper development of the state. Montana's roads, buildings, communications, etc. depend on the work of these professionals. Regulation of these professions is necessary to ensure that qualified individuals perform this work ethically in the state, protecting the people of Montana.

2. If your profession is not licensed, what public protection would be lost?

Without licensing and regulation of these professions, a great deal of public protection would be lost. Unqualified individuals would be designing structures and surveying properties that could lead to the collapse of a poorly-designed building or to a boundary dispute between two property owners. The public would be unaware of any faults or mistakes in the work until it is too late.

3. If a license is necessary (for health, safety, or welfare), does the professional/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. Because engineering and surveying require specific education and experience, individuals with the same education and experience are the ones qualified to assess the competency of those who want to perform those services in Montana. Without the board, there would be no monitoring of the profession to ensure quality work was being performed and the public would have no means to protect themselves against individuals performing substandard work.

4. Does the board deal with unlicensed practice issues? If yes, what types of issues?

Yes. The handling of unlicensed practice is a critical function of the board. The licensure process ensures that professional engineers and professional land surveyors completed the proper education, experience, and examinations to perform these vitally important services in Montana.

The board reviews a wide range of unlicensed practice complaints. Some unlicensed practice complaints involve the improper use of the title "professional engineer" or "professional land surveyor" which misleads the public to believe a person has met the stringent qualifications for licensure when, in fact, the person has not. The board also deals with more substantive unlicensed practice issues such as the possible practice of engineering by architects as well as the blatant practice of engineering or surveying by an unlicensed individual.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living. What is your response?

If an individual can provide sufficient proof he or she is qualified, the board will review the individual's application. There are four sets of qualifications for licensure for both professional engineers and professional land surveyors which require different combinations of education and experience. These different combinations of education and experience allow for qualified individuals from a number of backgrounds to apply to sit for the national exam or to apply for a license if the individual is licensed in another state.

6. How does your board monitor bias among board members toward a particular licensee, an applicant or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

The members of the board understand the importance and integrity that falls upon them and the impact of their decisions. If a member determines he or she has a conflict of interest, the member will immediately abstain from the complaint or topic on the agenda.

The board is made up of five professional engineers, two land surveyors, and two public members. The makeup of the board was determined by the number of licensees in each profession. While professional engineers make up a majority of the board, all members are willing to review matters relating to both professions. Engineering and surveying are related professions, so much so that a dual license

exists for professional engineer surveyors. The public members serve important roles in preventing bias towards either profession because they offer outside, independent views.

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

There is a Montana Society of Engineers (MSE) and a Montana Association of Registered Land Surveyors (MARLS). Both groups keep up with activities of the board, but the main goal of the associations is to promote their professions. They do not regulate the profession or handle complaints. They rely on the board to oversee the licensees and professions. Plus, membership in these associations is not required so many licensees would not fall under the purview of the associations' oversight.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

The Board of Professional Engineers and Professional Land Surveyors does not oversee insurance requirements or billing regulations at this time.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board is made up primarily of experienced and licensed professional engineers and professional land surveyors. As such, board members have a clear understanding of the education, experience and knowledge base needed to qualify as a professional in their respective areas of expertise. Therefore, it is appropriate and beneficial for the board to set the standards of licensing and professional practice and to enforce discipline when needed.

One of the main responsibilities of the board is to review applications for licensure. Because the board members are licensed professionals, they have the expertise to review the experience portions of the applications to determine competency whereas department staff lacks that expertise.

As for discipline, the board understands the seriousness of violations in terms of poor design and surveys, and the board can better determine unlicensed practice based on its codes, laws and rules.

10. Is there an optimum ratio between licensees, board size, or public representation?

Yes. The nine-member board relies on the knowledge of the public, those being protected, and the professionals, those doing the work, to make sound and fair decisions for license review and disciplinary processes.

There are approximately 1,770 resident professional engineers in Montana; 3,300 nonresident professional engineers; 250 resident professional land

surveyors; 185 nonresident professional land surveyors; 40 resident professional engineer surveyors; and nearly 20 nonresident professional engineer surveyors. The number of professional engineers and professional land surveyors on the board reflects the ratio of licensed professional engineers to licensed professional land surveyors in Montana.

The mixture of professional engineers, professional land surveyors and the public members provides for relevant discussion of the issues brought before the board.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

With the specialized knowledge required for both professions, it is appropriate for the licensees themselves to regulate one another. When circumstances require disciplinary action, the board has confidence in both the compliance specialist assigned to it by the Business Standards Division and the legal staff who prosecute offenders before Department of Labor and Industry hearing examiners. The Attorney General's Office would need to hire a number of different professionals acquainted with engineering and surveying in order to provide protection for the people of Montana.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the others' practice? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

Licensed professionals should not exceed their scope of practice. Such conduct is unprofessional and would be subject to discipline by the board which regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action – and that recommended by the Board of Professional Engineers and Professional Land Surveyors – is for the individual to seek an additional license to avoid a scope of practice issue.

The board recognizes that issues such as scope of practice will arise occasionally. The board has found that when they do arise, we have been able to work cooperatively with other regulatory boards. We believe cooperation can resolve issue, and we have confidence in the strong working relationships among boards and staff within the Business Standards Division.

13. Should the board have the ability to limit use of certain terminology to only a licensee?

The board does not limit the use of the word engineer or surveyor. However, the distinction of being called a professional engineer or a professional land surveyor is a distinction the board protects. These titles convey to the public that the individual has

met certain rigorous standards and that the individual is qualified to offer services in Montana.

Sincerely,

David Elias, Presiding Officer
Montana Board of Professional Engineers and
Professional Land Surveyors