

SENATE BILL NO. 365

INTRODUCED BY T. FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BUSINESSES AND PROFESSIONAL LICENSING; PROVIDING OVERSIGHT AUTHORITY TO THE DEPARTMENT OF JUSTICE FOR A REAL ESTATE RECOVERY TRUST ACCOUNT AND A TERMINATION PROCEDURE FOR THE ACCOUNT; PROVIDING RULEMAKING AUTHORITY; PROVIDING TITLE PROTECTION FOR CERTIFIED PUBLIC ACCOUNTANTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL SURVEYORS UNDER CONSUMER PROTECTION LAWS; ESTABLISHING CORNER RECORDATION AND FILING REQUIREMENTS; REMOVING VARIOUS LICENSING FEES; REPEALING LAWS RELATED TO THE BOARDS OF PUBLIC ACCOUNTANTS, REALTY REGULATION, PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, AND THE LICENSURE OF LANDSCAPE ARCHITECTS; AMENDING SECTIONS 2-6-1017, 2-7-501, 2-7-506, 2-7-522, 2-15-1761, 7-2-2801, 7-4-2801, 7-11-1006, 7-14-2606, 15-6-229, 15-61-102, 15-63-102, 17-7-502, 18-2-113, 18-2-503, 18-8-202, 20-9-204, 27-2-208, 32-7-103, 32-9-104, 35-4-301, 37-1-101, 37-1-332, 37-51-102, 37-60-105, 37-65-102, 37-65-204, 37-65-323, 61-8-309, 70-16-111, 70-22-103, 70-22-107, 70-22-115, 76-3-103, 76-3-403, 76-4-102, 76-8-101, 82-4-222, 82-4-303, AND 85-15-106, MCA; REPEALING SECTIONS 2-15-1756, 2-15-1757, 2-15-1763, 37-50-101, 37-50-102, 37-50-201, 37-50-202, 37-50-203, 37-50-204, 37-50-205, 37-50-209, 37-50-210, 37-50-301, 37-50-302, 37-50-305, 37-50-309, 37-50-314, 37-50-316, 37-50-318, 37-50-325, 37-50-330, 37-50-335, 37-50-341, 37-50-342, 37-50-401, 37-50-402, 37-50-403, 37-51-102, 37-51-103, 37-51-104, 37-51-105, 37-51-201, 37-51-202, 37-51-203, 37-51-204, 37-51-205, 37-51-207, 37-51-208, 37-51-209, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-306, 37-51-308, 37-51-309, 37-51-311, 37-51-312, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-323, 37-51-324, 37-51-401, 37-51-501, 37-51-502, 37-51-503, 37-51-504, 37-51-505, 37-51-506, 37-51-507, 37-51-508, 37-51-509, 37-51-510, 37-51-511, 37-51-512, 37-51-601, 37-51-602, 37-51-603, 37-51-605, 37-51-607, 37-51-608, 37-53-101, 37-53-102, 37-53-104, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-213, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-305, 37-53-306, 37-53-307, 37-53-308, 37-53-506, 37-66-101, 37-66-102, 37-66-103, 37-66-104, 37-66-105, 37-66-301, 37-66-302, 37-66-303, 37-66-304, 37-66-308, 37-66-309, 37-66-322, 37-67-101, 37-67-102, 37-67-103, 37-67-201, 37-67-202, 37-67-203, 37-67-204, 37-67-301, 37-67-304, 37-67-312, 37-67-313, 37-67-314, 37-67-317, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-327, 37-67-328, 37-67-329,

1 37-67-331, 37-67-332, AND 76-3-411, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION
2 DATE."

3
4 WHEREAS, certain professions have national testing and certifications that provide the potential for
5 industry-driven monitoring, regulation, and guidelines for professionalism; and

6 WHEREAS, public health and safety are not major concerns for certain business-oriented professions
7 that generally have experienced few consumer complaints related to public health or safety; and

8 WHEREAS, other national and state organizations and associations can provide licensing or certification
9 for professional engineers and surveyors, public accountants, landscape architects, and real estate brokers,
10 sellers, property managers, and timeshare salespeople.

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

13
14 NEW SECTION. **Section 1. Application for real estate recovery account -- process.** (1) Whenever
15 a consumer obtains a final judgment in any court of competent jurisdiction against a real estate broker or
16 salesperson for the conversion of trust funds for property, the consumer may after executing on the final judgment
17 file an application as provided in this section with the department for an order directing payment out of the real
18 estate recovery account provided for in [section 2] toward actual and direct loss unpaid on the judgment.

19 (2) An application or order for payment from the account may not be made for:

20 (a) a judgment that has been satisfied;

21 (b) an amount in excess of \$25,000 for any judgment, regardless of the number of persons injured by
22 acts of the broker or salesperson or the number of parcels of real estate involved in the transaction or
23 transactions;

24 (c) attorney fees and exemplary or punitive damages; or

25 (d) amounts remaining unpaid on a final judgment entered more than 2 years prior to the date of
26 application.

27 (3) The application must be served by certified mail, return receipt requested, upon the department, the
28 real estate broker or salesperson, and any other party to the transaction referred to in the application.

29 (4) The consumer making application for payment from the account shall show in the application:

30 (a) that the consumer is not the spouse of the judgment debtor or the personal representative of the

1 spouse;

2 (b) that the consumer has obtained a judgment that satisfies the requirements of subsections (1) through
3 (3), stating the amount of the judgment and the amount unpaid on the date of the application;

4 (c) that the consumer has, on the dates and at the times shown by the applicant, diligently pursued the
5 remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14;

6 (d) the amount of any money obtained as a result of the proceedings required to be shown in subsection
7 (4)(c) and the balance of the judgment remaining unpaid for which application is made; and

8 (e) that the consumer has diligently pursued the remedies of execution and proceedings in aid of
9 execution against any other person against whom the consumer has a judgment as a result of the transaction
10 for which the consumer seeks recovery from the account.

11
12 **NEW SECTION. Section 2. Real estate recovery account -- rulemaking.** (1) There is a real estate
13 recovery account in the state special revenue fund to be used by the department to provide at least partial
14 payment of claims based on unsatisfied judgments for real estate claims brought against a real estate broker or
15 salesperson under this part. Money in the account is statutorily appropriated, as provided in 17-7-502, for the
16 purposes described in this section.

17 (2) Money earned on the investment of funds in the account must be credited to the account annually.

18 (3) The department may adopt rules to determine criteria for applications, review of applications,
19 payments, notice to applicants, and appeals of determinations. The cost of the rulemaking may be paid out of the
20 account.

21
22 **NEW SECTION. Section 3. Protected titles.** (1) To protect consumers who hire the following
23 professionals, the use of the following titles is protected under this part:

24 (a) a certified public accountant or CPA, who must be nationally accredited as a certified public
25 accountant by the American institute of certified public accountants or the national association of state boards
26 of accountancy, having passed that organization's CPA examination services;

27 (b) a professional engineer, nationally accredited by the accreditation board for engineering and
28 technology or the national council of examiners for engineering and surveying; and

29 (c) a professional surveyor, nationally accredited by the national council of examiners for engineering
30 and surveying.

(2) Misuse of a title under this part is an unlawful practice, as provided in 30-14-103, and is subject to the penalties provided in 30-14-142.

Section 4. Section 2-6-1017, MCA, is amended to read:

"2-6-1017. Prohibition on dissemination or use of distribution lists -- exceptions -- penalties. (1)

Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, ~~50, 51, 53,~~ 54, 60, 65 through ~~68,~~ 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed

for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 5. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

~~(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.~~

~~(3)~~(2) "Department" means the department of administration.

~~(4)~~(3) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

~~(5)~~(4) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

~~(6)~~(5) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government

- 1 auditing standards; or
- 2 (b) a certified public accountant who meets the standards in subsection ~~(6)(a)~~ (5)(a).
- 3 ~~(7)(6)~~ (a) "Local government entity" means a county, city, district, or public corporation that:
- 4 (i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government
- 5 revenue for the purpose of serving the general public;
- 6 (ii) is governed by a board, commission, or individual elected or appointed by the public or representatives
- 7 of the public; and
- 8 (iii) receives local, state, or federal financial assistance.
- 9 (b) Local government entities include but are not limited to:
- 10 (i) airport authority districts;
- 11 (ii) cemetery districts;
- 12 (iii) counties;
- 13 (iv) county housing authorities;
- 14 (v) county road improvement districts;
- 15 (vi) county sewer districts;
- 16 (vii) county water districts;
- 17 (viii) county weed management districts;
- 18 (ix) drainage districts;
- 19 (x) fire companies;
- 20 (xi) fire districts;
- 21 (xii) fire service areas;
- 22 (xiii) hospital districts;
- 23 (xiv) incorporated cities or towns;
- 24 (xv) irrigation districts;
- 25 (xvi) mosquito districts;
- 26 (xvii) municipal fire departments;
- 27 (xviii) municipal housing authority districts;
- 28 (xix) port authorities;
- 29 (xx) solid waste management districts;
- 30 (xxi) rural improvement districts;

(xxii) school districts, including a district's extracurricular funds;

(xxiii) soil conservation districts;

(xxiv) special education or other cooperatives;

(xxv) television districts;

(xxvi) urban transportation districts;

(xxvii) water conservancy districts;

(xxviii) regional resource authorities; and

(xxix) other miscellaneous and special districts.

~~(b)(7)~~ "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 6. Section 2-7-506, MCA, is amended to read:

"2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, ~~in consultation with the board,~~ shall adopt rules governing the:

(a) criteria for the selection of the independent auditor;

(b) procedures and qualifications for placing applicants on the roster;

(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department may designate an independent auditor to perform the audit.

1 The costs incurred by the department in arranging the audit must be paid by the local government entity to the
2 department in the manner of other claims against the local government entity."

3
4 **Section 7.** Section 2-7-522, MCA, is amended to read:

5 **"2-7-522. Report review.** (1) The department shall determine whether the provisions of this part have
6 been complied with by the independent auditor.

7 (2) Upon receipt of the audit report from the local government entity the department shall review the
8 report. If the department determines the reporting requirements have not been met, the department shall notify
9 the local government entity and the independent auditor submitting the report of the significant issues of
10 noncompliance. The notification must include issuance of a statement of deficiencies by the department. The
11 department shall allow the independent auditor 60 days to correct the identified deficiencies.

12 (3) If the corrections are not made within 60 days of the department's notice, the department shall notify
13 the local government entity that the report has not been received. Failure to submit a report shall result in the
14 withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected
15 report.

16 ~~(4) Upon review of the report, if the department determines the independent auditor has issued a report~~
17 ~~that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the~~
18 ~~department shall notify the board.~~

19 ~~(5)~~(4) The department shall review the audit report findings and the response of the governing body or
20 executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern
21 financial assistance, the department shall notify the state agency that is responsible for disbursing the state or
22 federal funding.

23 ~~(6)~~(5) The department must have access in its office to the working papers of the independent auditor."
24

25 **Section 8.** Section 2-15-1761, MCA, is amended to read:

26 **"2-15-1761. Board of architects and landscape architects.** (1) There is a board of architects and
27 landscape architects.

28 (2) The board consists of ~~six~~ four members appointed by the governor with the consent of the senate.
29 The members are:

30 (a) two licensed architects who have been in continuous practice for 3 years before their appointment;

(b) one licensed architect who is on the staff of the Montana state university-Bozeman school of architecture; and

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture ~~or landscape architecture; and~~

~~— (d) two licensed landscape architects.~~

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 9. Section 7-2-2801, MCA, is amended to read:

"7-2-2801. Alteration of county boundaries for public safety purposes -- authorization -- petition -- definitions. (1) County boundaries may be altered for reasons of improving public safety as provided in this part.

(2) (a) Before a petition to alter county boundaries as provided in this part may be circulated for signatures, a sample petition must be submitted to the county election administrator of the county in which the property is located for approval as to form. The person submitting the sample petition shall consult with a nationally accredited professional land surveyor, ~~as defined in 37-67-101,~~ to prepare a legal description of the proposed new county boundary.

(b) The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part.

(c) The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundary.

(d) If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice of the rejection to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 10 days after submission of the sample send written notice of the approval to the person who submitted the petition. After that notice, the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(3) Upon approval as to form, a petition to alter county boundaries for public safety purposes may be circulated for signatures.

(4) To be considered at an election, the petition must be signed by at least 25 or a majority of the qualified petitioners, whichever is less, and must be submitted within 120 days of the petition's approval as to form to the county clerks of the adjoining counties for which boundary changes are proposed requesting that the proposed boundary changes be submitted to the qualified electors of the adjoining counties.

(5) The petition must include:

(a) the names of the qualified petitioners and the legal description of the property owned by the qualified petitioner that is proposed to be transferred to an adjoining county;

(b) a general description of the property proposed to be moved from one county to another;

(c) a general description and legal description of the proposed boundary change;

(d) a map showing the proposed boundary change; and

(e) the reason, based on proximity to public safety services, for the proposed boundary change.

(6) For the purposes of this part, the following definitions apply:

(a) "Public safety services" means law enforcement, firefighting, or emergency medical services.

(b) "Qualified petitioner" means an owner of real property in an area of a county that is proposed to become part of an adjoining county whose property may be reached more quickly by public safety services headquartered in the county seat of an adjoining county than by public safety services headquartered in the county seat of the county in which the owner's property is located."

Section 10. Section 7-4-2801, MCA, is amended to read:

"7-4-2801. Qualifications for county surveyor and deputies. (1) Except as provided in subsection (3), a county surveyor must be a nationally accredited professional engineer ~~as defined in 37-67-101~~ or nationally accredited professional land surveyor ~~as defined in 37-67-101~~.

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), the officer shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor."

Section 11. Section 7-11-1006, MCA, is amended to read:

"7-11-1006. Determining special district boundaries. (1) The boundaries of the proposed special

1 district must be mapped, clearly described, and made available to the public at the time of the publication of the
2 notice of public hearing pursuant to 7-11-1007 before the district may be approved.

3 (2) The governing body or petitioners shall consult with a nationally accredited professional land
4 surveyor, ~~as defined in 37-67-101~~, to prepare a legal description of the boundaries for the proposed special
5 district.

6 (3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines
7 as far as practical."

8
9 **Section 12.** Section 7-14-2606, MCA, is amended to read:

10 **"7-14-2606. Survey of road.** ~~(1)~~ The board may order the county surveyor or, if the county surveyor is
11 not a nationally accredited professional land surveyor, some other professional land surveyor to survey and plat
12 the road. The surveyor shall file the surveyor's field notes with the county clerk and recorder.

13 ~~(2) As used in this section, "professional land surveyor" has the meaning provided in 37-67-101."~~
14

15 **Section 13.** Section 15-6-229, MCA, is amended to read:

16 **"15-6-229. Exemption for land adjacent to transmission line right-of-way easement -- application**
17 **-- limitations.** (1) Subject to the conditions of this section, for tax years beginning after December 31, 2007, there
18 is allowed an exemption from property taxes for land that is within 660 feet on either side of the midpoint of a
19 transmission line right-of-way or easement.

20 (2) (a) An owner or operator of a transmission line shall apply to the department for an exemption under
21 this section on a form provided by the department. The application must include a legal description and a digitized
22 certificate of survey prepared by a nationally accredited surveyor ~~registered with the board of professional~~
23 ~~engineers and professional land surveyors provided for in 2-15-1763~~ of the property in the county for which the
24 exemption is sought and other information required by the department. A separate application must be made for
25 each county in which an exemption is sought.

26 (b) An application for an exemption that would be in effect for the tax year and subsequent tax years
27 must be filed with the department by March 1 in the tax year that the exemption is sought.

28 (3) (a) The owner or operator of a transmission line shall inform the department of any change in
29 ownership of the land or other circumstances that may affect the eligibility of the land for the exemption. The
30 department shall determine whether any changes have occurred that affect the eligibility of the land for the

1 exemption.

2 (b) The exemption allowed under this section does not apply to:

3 (i) the boundaries of an incorporated or unincorporated city or town;

4 (ii) a platted and filed subdivision;

5 (iii) tracts of land used for residential, commercial, or industrial purposes; or

6 (iv) the 1 acre of land beneath improvements on land described in 15-6-133(1)(c) and 15-7-206(2).

7 (4) For the purposes of this section, "transmission line" means an electric line with a design capacity of
8 30 megavoltamperes or greater that is constructed after January 1, 2007."

9
10 **Section 14.** Section 15-61-102, MCA, is amended to read:

11 **"15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following
12 definitions apply:

13 (1) "Account administrator" means:

14 (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

15 (b) a health care insurer as defined in 33-22-125;

16 (c) a certified public accountant ~~licensed to practice in this state pursuant to Title 37, chapter 50;~~

17 (d) an employer if the employer has a self-insured health plan under ERISA;

18 (e) the account holder or an employee for whose benefit the account in question is established;

19 (f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

20 (g) an attorney licensed to practice law in this state;

21 (h) a person who is an enrolled agent allowed to practice before the United States internal revenue
22 service.

23 (2) "Account holder" means an individual who is a resident of this state and who establishes a medical
24 care savings account or for whose benefit the account is established.

25 (3) "Dependent" means the spouse of the employee or account holder or a child of the employee or
26 account holder if the child is:

27 (a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is
28 under 19 years of age;

29 (b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other
30 care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated,

1 self-supporting, married, or a member of the armed forces of the United States; or

2 (c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

3 (4) "Eligible medical expense" means an expense paid by the employee or account holder for medical
4 care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account
5 holder.

6 (5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents
7 a medical care savings account is established. The term includes a self-employed individual.

8 (6) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

9 (7) "Medical care savings account" or "account" means an account established with an account
10 administrator in this state pursuant to 15-61-201."

11
12 **Section 15.** Section 15-63-102, MCA, is amended to read:

13 **"15-63-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
14 definitions apply:

15 (1) "Account administrator" means:

16 (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

17 (b) a certified public accountant ~~licensed to practice in this state pursuant to Title 37, chapter 50;~~ or

18 (c) the account holder.

19 (2) "Account holder" means an individual who is a resident of this state and who establishes, individually
20 or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A
21 married taxpayer filing separately may be an account holder if the account is established separately from the
22 taxpayer's spouse. Married taxpayers filing jointly are considered as the account holder.

23 (3) "Eligible costs" means the downpayment and allowable closing costs for the purchase of a
24 single-family residence in Montana by a first-time home buyer.

25 (4) "First-time home buyer" means an individual who has never owned or purchased under contract for
26 deed, either individually or jointly, a single-family residence in Montana or out-of-state.

27 (5) "First-time home buyer savings account" or "account" means an account established with an account
28 administrator in this state pursuant to 15-63-201.

29 (6) "Single-family residence" means an owner-occupied residence in Montana, including a manufactured
30 home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by

1 or that has been purchased under contract for deed by a person, individually or jointly."

2
3 **Section 16.** Section 17-7-502, MCA, is amended to read:

4 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
5 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
6 need for a biennial legislative appropriation or budget amendment.

7 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
8 of the following provisions:

9 (a) The law containing the statutory authority must be listed in subsection (3).

10 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
11 appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
13 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
14 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;
15 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;
16 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
17 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;
18 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;
19 23-7-402; 30-10-1004; [section 2]; 37-43-204; 37-50-209; ~~37-51-501~~; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101;
20 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
21 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;
22 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;
23 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

24 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
25 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
26 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
27 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
28 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
29 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
30 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded

liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)"

Section 17. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;

1 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;
2 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
3 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;
4 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;
5 23-7-402; 30-10-1004; 37-43-204; ~~37-50-209; 37-51-501~~; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;
6 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
7 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
8 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115;
9 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

10 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
11 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
12 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
13 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
14 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
15 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
16 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
17 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
18 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
19 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
20 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion
21 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004
22 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,
23 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;
24 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;
25 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.
26 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.
27 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,
28 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of
29 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of
30 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117

terminates June 30, 2025; ~~pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates~~
September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December
31, 2023.)"

Section 18. Section 18-2-113, MCA, is amended to read:

"18-2-113. Architects on public buildings to be certified. A contract for the employment of or the
rendering of professional services by any person relating to the planning or construction of public buildings or
other public works or improvements may not be entered into by this state or its agencies or a county, city, or
school district in this state unless the person is the holder in good standing of a license granted under Title 37,
chapter 65, by the board of architects ~~and landscape architects.~~"

Section 19. Section 18-2-503, MCA, is amended to read:

"18-2-503. Alternative project delivery contract -- award criteria. (1) (a) Whenever a state agency
or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable,
the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent
to each respondent that meets the qualification criteria specified in the request for qualifications. The request for
proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the
project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other
factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract
must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to this part, architectural services must be performed by an

1 architect, as defined in 37-65-102, and engineering services must be performed by a nationally accredited
2 professional engineer, ~~as defined in 37-67-101.~~

3 (4) At the conclusion of the selection process, the state agency or the governing body shall state and
4 document in writing the reasons for selecting the contractor that was awarded the contract. The documentation
5 must be provided to all applicants and to anyone else, upon request.

6 (5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred
7 in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably."
8

9 **Section 20.** Section 18-8-202, MCA, is amended to read:

10 **"18-8-202. Definitions.** Unless the context clearly indicates otherwise, in this part, the following
11 definitions apply:

12 (1) "Agency" means a state agency, local agency, or special district.

13 (2) "Architectural, engineering, and land surveying" means services rendered by a person, other than
14 as an employee of an agency, contracting to perform activities within the scope of the general definition of
15 professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or
16 with national accreditation as an engineer or land surveyor pursuant to Title 37, chapter 67.

17 (3) "Licensed professional" ~~or includes a "licensed licensed~~ architect, a nationally accredited professional
18 engineer, or a nationally accredited professional land surveyor ~~surveyor~~ means a person providing who provides
19 professional services in the professional person's area of expertise and who is not an employee of the agency
20 for which the services are provided.

21 (4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district
22 or authority, airport authority, political subdivision of any type, or any other entity or authority of local government,
23 in corporate form or otherwise.

24 (5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or
25 corporation.

26 (6) "Special district" means a unit of local government, other than a city, town, or county, authorized by
27 law to perform a single function or a limited number of functions, including but not limited to water districts,
28 irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts,
29 sewer districts, and transportation districts.

30 (7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority

1 of state government."

2
3 **Section 21.** Section 20-9-204, MCA, is amended to read:

4 **"20-9-204. Conflicts of interests, letting contracts, and calling for bids -- exceptions.** (1) It is
5 unlawful for a trustee to:

6 (a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while
7 acting in that official capacity or by the board of trustees of which the trustee is a member; or

8 (b) be employed in any capacity by the trustee's own school district, with the exception of officiating at
9 athletic competitions under the auspices of the Montana officials association.

10 (2) For the purposes of subsection (1):

11 (a) "contract" does not include:

12 (i) merchandise sold to the highest bidder at public auctions;

13 (ii) investments or deposits in financial institutions that are in the business of loaning or receiving money
14 when the investments or deposits are made on a rotating or ratable basis among financial institutions in the
15 community or when there is only one financial institution in the community; or

16 (iii) contracts for professional services, other than salaried services, or for maintenance or repair services
17 or supplies when the services or supplies are not reasonably available from other sources if the interest of any
18 board member and a determination of the lack of availability are entered in the minutes of the board meeting at
19 which the contract is considered; and

20 (b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

21 (3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in
22 20-3-322(5), or as provided in subsections (4) and (6) of this section, whenever any building, furnishing, repairing,
23 or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done
24 or the purchase made must be by contract if the sum exceeds \$80,000.

25 (b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible
26 bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be published
27 in the newspaper that will give notice to the largest number of people of the district as determined by the trustees.
28 The advertisement must be made once each week for 2 consecutive weeks, and the second publication must
29 be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to
30 this section is void. The bidding requirements applicable to services performed for the benefit of the district under

1 this section do not apply to:

2 (i) a ~~registered~~ nationally accredited professional engineer, surveyor, real estate appraiser, or ~~registered~~
3 licensed architect;

4 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

5 (iii) an attorney;

6 (iv) a consulting actuary;

7 (v) a private investigator licensed by any jurisdiction;

8 (vi) a claims adjuster;

9 (vii) ~~an a certified public~~ accountant licensed under Title 37, chapter 50; or

10 (viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into
11 an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

12 (4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services
13 with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and
14 services through the group without complying with the provisions of subsection (3) if the cooperative purchasing
15 group has a publicly available master list of items available with pricing included and provides an opportunity at
16 least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder
17 standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.

18 (5) This section may not require the board of trustees to let a contract for any routine and regularly
19 performed maintenance or repair project or service that can be accomplished by district staff whose regular
20 employment with the school district is related to the routine performance of maintenance for the district.

21 (6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy
22 audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and
23 installation of conservation measures pursuant to the energy performance contract."
24

25 **Section 22.** Section 27-2-208, MCA, is amended to read:

26 **"27-2-208. Actions for damages arising out of work on improvements to real property or land**
27 **surveying.** (1) Except as provided in 70-19-427(1) and subsections (2) and (3) of this section, an action to
28 recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in
29 writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation
30 of construction of any improvement to real property or resulting from or arising out of land surveying of real

property may not be commenced more than 10 years after completion of the improvement or land surveying.

(2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred during the 10th year after the completion of the improvement or land surveying may be commenced within 1 year after the occurrence of the injury.

(3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement or real property that is surveyed at the time a right of action arises.

(4) As used in this section, the following definitions apply:

(a) ~~"completion"~~ "Completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) ~~"land"~~ "Land surveying" means ~~the practice of land surveying, as defined in 37-67-101~~ any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

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

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

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

(iv) monumenting of property boundaries;

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

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

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

(5) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action."

Section 23. Section 32-7-103, MCA, is amended to read:

1 **"32-7-103. Exemptions.** (1) The provisions of this part do not apply to the following:

2 (a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not
3 actively engaged in the escrow business;

4 (b) ~~a person licensed by this state pursuant to Title 37, chapter 50, as a~~ certified public accountant who
5 is not actively engaged in the escrow business;

6 (c) a person whose principal business is that of preparing abstracts or making searches of title that are
7 used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this
8 state relating to insurance companies and the person is regulated by the commissioner of insurance;

9 (d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or
10 mortgage servicer, except that a licensed mortgage broker, mortgage lender, or mortgage servicer that provides
11 escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan
12 agreements also must be licensed under this part as an escrow business;

13 (e) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or
14 examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the
15 department upon the department's request.

16 (f) except as provided in subsection (2), any real estate broker ~~licensed by the Montana board of realty~~
17 ~~regulation~~ if the real estate broker is performing an act in the course of or incidental to a single real estate
18 transaction ~~for which a real estate license is required~~;

19 (g) any person furnishing escrow services under the order of a court; and

20 (h) a loan closer if the loan closer:

21 (i) is employed by an exempt financial institution; or

22 (ii) is an independent contractor acting only as a courier and who does not take possession of the funds
23 for deposit or subsequent disbursement.

24 (2) A trust account of a real estate broker ~~licensed by the Montana board of realty regulation~~ is not an
25 escrow account within the meaning of this part."

26
27 **Section 24.** Section 32-9-104, MCA, is amended to read:

28 **"32-9-104. Exemptions -- proof of exemption.** (1) The provisions of this part do not apply to:

29 (a) an entity that is an agency of the federal, state, tribal, or local government;

30 (b) an individual who is an employee of a federal, state, tribal, local government, or housing finance

1 agency acting as a loan originator only pursuant to the individual's official duties as an employee of the federal,
2 state, tribal, local government, or housing finance agency;

3 (c) an entity described in 32-9-103(38)(a)(i) through (38)(a)(iii);

4 (d) a registered mortgage loan originator when acting for an entity described in 32-9-103(38)(a)(i)
5 through (38)(a)(iii);

6 (e) an individual who performs only administrative or clerical tasks at the direction of and subject to the
7 supervision and instruction of an individual who:

8 (i) is a licensed and registered mortgage loan originator pursuant to this part; or

9 (ii) is not required to be licensed in accordance with subsection (1)(b), (1)(d), or (1)(g);

10 (f) an entity that is a bona fide not-for-profit entity;

11 (g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work
12 duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential
13 mortgage loans with terms that are favorable to the borrower;

14 (h) a person that performs only real estate brokerage activities ~~and is licensed or registered pursuant~~
15 ~~to 37-51-301~~ unless the person is compensated by a mortgage broker, a mortgage lender, or a mortgage loan
16 originator or an agent of the mortgage broker, mortgage lender, or mortgage loan originator;

17 (i) a person regulated by the commissioner of insurance if that person's principal business is that of
18 preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance
19 policy by a company doing business under the laws of this state relating to insurance companies;

20 (j) a Montana-licensed attorney performing activities that fall within the definition of a mortgage loan
21 originator if the activities are:

22 (i) considered by the Montana supreme court to be part of the authorized practice of law within this state;

23 (ii) carried out within an attorney-client relationship; and

24 (iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or

25 (k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is
26 performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular
27 home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker
28 for the performance of the administrative or clerical tasks.

29 (2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed
30 by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required

1 by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and
2 accompanying documentation by December 31 of each year.

3 (b) In determining whether an entity is a bona fide not-for-profit entity, the department may rely on its
4 receipt and review of:

5 (i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities;

6 or

7 (ii) reports and attestations prescribed by the department.

8 (3) The burden of proving an exemption under this section is on the person claiming the exemption. (See
9 part compiler's comment regarding contingent suspension.)"

10
11 **Section 25.** Section 35-4-301, MCA, is amended to read:

12 **"35-4-301. Issuance and transfer of shares.** (1) ~~Except as provided in 37-50-330, a~~ A professional
13 corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

14 (a) natural persons authorized by law of this or any other state, a territory of the United States, or the
15 District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

16 (b) general partnerships in which all the partners are authorized by law of this or any other state, a
17 territory of the United States, or the District of Columbia to render a professional service permitted by the articles
18 of incorporation and in which at least one partner is authorized by law in this state to render a professional service
19 permitted by the articles of incorporation of the corporation; and

20 (c) professional corporations, domestic or foreign, authorized by law in this state to render a professional
21 service permitted by the articles of incorporation of the corporation.

22 (2) The licensing authority may by rule further restrict or condition the issuance of shares in order to
23 preserve ethical standards, but the rule may not cause a person holding shares at the time the rule becomes
24 effective to become a disqualified person.

25 (3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and
26 rights or options to purchase shares of the corporation only to natural persons, general partnerships, and
27 professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does
28 not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

29 (4) Each certificate representing shares of a professional corporation must state conspicuously upon its
30 face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer

1 imposed by the licensing authority pursuant to this chapter.

2 (5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section
3 is void."

4
5 **Section 26.** Section 37-1-101, MCA, is amended to read:

6 **"37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department shall:

7 (1) establish and provide all the administrative, legal, and clerical services needed by the boards within
8 the department, including corresponding, receiving and processing routine applications for licenses as defined
9 by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting
10 administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board
11 meetings and hearings, and filing;

12 (2) standardize policies and procedures and keep in Helena all official records of the boards;

13 (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of
14 each board or elsewhere in the state if requested by the board;

15 (4) contract for or administer and grade examinations required by each board;

16 (5) investigate complaints received by the department of illegal or unethical conduct of a member of the
17 profession or occupation under the jurisdiction of a board or a program within the department;

18 (6) assess the costs of the department to the boards and programs on an equitable basis as determined
19 by the department;

20 (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

21 (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed
22 individual's board after a finding of reasonable cause by a screening panel of the board pursuant to
23 37-1-307(1)(d);

24 (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board
25 cannot operate in a cost-effective manner;

26 (b) suspend all duties under this title related to the board except for services related to renewal of
27 licenses;

28 (c) review the need for a board and make recommendations to the legislative interim committee with
29 monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency;

30 and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary. ~~[This subsection does not apply to the board of public accountants, except that the department may monitor the board's cash balances.];~~

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department. ~~(Bracketed language terminates September 30, 2019--sec. 10, Ch. 427, L. 2015.)"~~

Section 27. Section 37-1-332, MCA, is amended to read:

"37-1-332. Administrative proceedings to stop unlicensed practice --~~board of realty regulation~~ -- state electrical board -- board of plumbers. (1) For purposes of this section, the term "board" means ~~the board of realty regulation provided for in 2-15-1757, the state electrical board provided for in 2-15-1764, or the~~ board of plumbers provided for in 2-15-1765.

(2) (a) After investigation under 37-1-317, the board may establish a screening panel to determine if there is reasonable cause to believe a person has engaged in or is engaging in any act or practice constituting unlicensed practice of a profession or occupation.

(b) If reasonable cause is found under subsection (2)(a), the board may initiate a contested case proceeding against the person pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.

(3) Following a contested case proceeding, the board may apply any of the following sanctions to a person found to have engaged in the unlicensed practice of a profession or occupation:

(a) impose a civil penalty not to exceed \$1,500 for each violation and not to exceed a total of \$5,000 for all related violations; and

(b) require the person to pay up to \$5,000 for the costs of the administrative proceedings, including but

not limited to costs allowable under Title 25, chapter 10, but excluding the costs of investigation and the board's attorney fees.

(4) Judicial review of any contested case under this section must be filed with the first judicial district or the district where the violation occurred, pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part 7.

(5) The remedies provided by this section are in addition to all other remedies or actions that may be taken, including those authorized by 37-1-317. The remedies provided by this section may not be applied either to licensees or to employees of licensees."

Section 28. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Account" means the real estate recovery account established in 37-51-501.~~

~~(2)~~(1) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

~~(3)~~(2) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.

~~(4)~~(3) "Board" means the board of realty regulation provided for in 2-15-1757.

~~(5)~~(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable

consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection ~~(5)~~ (4).

~~(6)~~(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

~~(7)~~(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

~~(8)~~(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

~~(9)~~(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(10)~~(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

1 ~~(11)~~(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
2 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
3 written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be
4 considered a dual agent.

5 ~~(12)~~(11) "Franchise agreement" means a contract or agreement by which:

6 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
7 substantial part by the franchisor;

8 (b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,
9 trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

10 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
11 agreement.

12 ~~(13)~~(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated
13 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for
14 a designated transaction and who may not be considered to be acting for other than the buyer with respect to the
15 designated transaction.

16 ~~(14)~~(13) "In-house seller agent designate" means a broker or salesperson employed by or associated
17 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for
18 a designated transaction and who may not be considered to be acting for other than the seller with respect to the
19 designated transaction.

20 ~~(15)~~(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real
21 estate, with the terms and conditions set out in the agreement.

22 ~~(16)~~(15) "Negotiations" includes:

23 (a) efforts to act as an intermediary between parties to a real estate transaction;

24 (b) facilitating and participating in contract discussions;

25 (c) completing forms for offers, counteroffers, addendums, and other writings; and

26 (d) presenting offers and counteroffers.

27 ~~(17)~~(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and
28 domestic, except that when referring to a person licensed under this chapter, it means an individual.

29 ~~(18)~~(17) "Property manager" means an individual who for a salary, commission, or compensation of any
30 kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing,

renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;

(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;

(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;

(d) assists in creating or completing real estate lease contracts;

(e) procures tenants for owners of real estate located in this state;

(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

(g) makes the advertising of real property for lease available by public display to potential tenants;

(h) shows rental or lease properties to potential tenants;

(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;

(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;

(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;

(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;

(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection ~~(18)~~ (17).

~~(19)~~(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(20)~~(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,

exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(21)~~(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(22)~~(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(23)~~(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(24)~~(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(25)~~(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

~~(26)~~(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(27)~~(26) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 29. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

1 (iii) who has received training as a private security guard from the employer or at the employer's direction;

2 (c) an officer or employee of the United States, of this state, or of a political subdivision of the United
3 States or this state while the officer or employee is engaged in the performance of official duties;

4 (d) a person engaged exclusively in the business of obtaining and furnishing information as to the
5 financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance,
6 indemnity bonds, or commercial credit;

7 (e) an attorney at law while performing duties as an attorney at law;

8 (f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices,
9 governmental agencies, or other entities;

10 (g) a law student who is serving a legal internship;

11 (h) a collection agency or finance company licensed to do business under the laws of this state, or an
12 employee of a collection agency or finance company licensed in this state while acting within the scope of
13 employment, while making an investigation incidental to the business of the agency or company, including an
14 investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for
15 the collection of claims owed or due or asserted to be owed or due or the equivalent;

16 (i) special agents employed by railroad companies, provided that the railroad company notifies the board
17 that its agents are operating in the state;

18 (j) insurers and insurance producers and insurance brokers licensed by the state while performing duties
19 in connection with insurance transacted by them;

20 (k) individuals engaged in the collection and examination of physical material for forensic purposes;

21 (l) an insurance adjuster, as defined in 37-60-101;

22 (m) an internal investigator or auditor while making an investigation incidental to the business of the
23 agency or company by which the investigator or auditor is singularly and regularly employed;

24 (n) a person who evaluates and advises management on personnel and human resource issues in the
25 workplace; or

26 (o) a certified public accountant ~~with a license or permit to practice or a practice privilege under~~
27 ~~37-50-314 or 37-50-325~~ to the extent that the person is engaged in an investigation relating to the practice of
28 accounting.

29 (2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not
30 exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 30. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual who is technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects and landscape architects provided for in 2-15-1761.

(3) "Building" means a structure intended primarily for human occupancy or use.

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

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in those activities; in which the safeguarding of life, health, or property is concerned, ~~as. The practice of architecture includes~~ consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building that the state or any political subdivision of the state maintains for the use of the public."

Section 31. Section 37-65-204, MCA, is amended to read:

"37-65-204. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation and enforcement of ~~Title 37, chapter 66, and~~ this chapter in accordance with the provisions of the Montana Administrative Procedure Act."

Section 32. Section 37-65-323, MCA, is amended to read:

"37-65-323. Injunction. Whenever the board has reasonable cause to believe that a person is violating any provision of ~~Title 37, chapter 66, this chapter,~~ or a rule of the board, it may, in addition to the remedies provided in 37-65-322 ~~or 37-66-322, as appropriate,~~ and without prejudice, bring an action in the district court for the county in which the violation is occurring to enjoin the person from continuing to engage in the violation or from doing any act that contributes to the violation."

1

2 **Section 33.** Section 61-8-309, MCA, is amended to read:

3 **"61-8-309. Establishment of special speed zones -- engineering and traffic investigation.** (1) (a)

4 If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by
5 61-8-303 or 61-8-312 is greater or less than is reasonable or safe under the conditions found to exist at an
6 intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its
7 jurisdiction, the commission may set a reasonable and safe special speed limit at that location. In the case of a
8 school zone adjacent to a state highway, the commission is not required to base its speed limit determination
9 solely upon the results of the engineering and traffic investigation.

10 (b) If a local authority requests the department of transportation or an engineer, as provided in subsection
11 (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway
12 under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission
13 may not increase the speed limit under consideration as a result of the investigation.

14 (c) (i) A local authority may request at its own expense that an engineering and traffic investigation be
15 completed by a ~~licensed~~ nationally accredited professional engineer selected from a list compiled and approved
16 by a committee as provided in subsection (1)(c)(ii).

17 (ii) A committee containing two department of transportation staff appointed by the director and two
18 representatives of associations whose membership comprises cities, towns, and counties, as authorized by
19 7-5-2141 and 7-5-4141, shall review credentials submitted by ~~licensed~~ nationally accredited professional
20 engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic
21 investigations for local governments. The list must be updated every 2 years.

22 (iii) Upon completion of an engineering and traffic investigation conducted for a local government, the
23 department of transportation shall submit a report to the commission with findings and recommendations. The
24 commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the
25 date the investigation is submitted to the department of transportation.

26 (d) A local authority may request a temporary special reduced or increased speed zone for a route or
27 route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b),
28 or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones,
29 the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual
30 and engineering review of a route or a route segment for which a temporary special speed zone is requested.

1 The reviewing party must include a representative of the local authority. Upon completion of the preliminary
2 review, if the department of transportation concurs with the local authority that a temporary special reduced or
3 increased speed limit is warranted, a temporary special reduced or increased speed zone may be established
4 upon formal approval by the commission. The temporary special reduced or increased speed limit remains in
5 effect until a complete traffic and engineering study has been done on the route or route segment and the
6 commission has made a determination on changing the speed limit.

7 (2) Pending completion of an engineering and traffic investigation as provided for in subsection (1), the
8 commission may temporarily set a speed limit of not less than 75 miles an hour on a segment of the federal-aid
9 interstate highway system that it reasonably believes is not suitable for the limit established in 61-8-303(1)(a).

10 (3) The department of transportation shall erect and maintain appropriate signs giving notice of special
11 limits. If the special limits apply to a school zone, the department shall consider the use of electronic signs in lieu
12 of or in addition to other appropriate signs. When the signs are erected, the limits are effective for those zones
13 at all times or at other times that the commission sets.

14 (4) The authority of the commission under this section includes the authority to set reduced nighttime
15 speed limits on curves and other dangerous locations.

16 (5) This section does not authorize the commission to set a statewide speed limit.

17 (6) (a) The violation of a speed limit established under this section, except subsection (2), is a
18 misdemeanor offense and is punishable as provided in 61-8-711.

19 (b) The violation of a speed limit established under subsection (2) is punishable as provided in 61-8-725."
20

21 **Section 34.** Section 70-16-111, MCA, is amended to read:

22 **"70-16-111. Entry to property by professional land surveyor or other qualified person -- trespass**
23 **exception -- notice -- liability.** (1) Subject to the conditions and restrictions of this section, the provisions of
24 45-6-203 do not apply to a person who is ~~licensed or registered under Title 37, chapter 67, part 3, as a~~
25 ~~professional land surveyor, as defined in 37-67-101,~~ accredited by a national organization or to a person acting
26 under the direct supervision of a professional land surveyor as an employee, agent, or representative.

27 (2) A person qualified under subsection (1) may enter public or private land to investigate and use
28 boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

29 (3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give
30 notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following

1 information:

2 (i) the identity of the person for whom the survey is being performed;

3 (ii) the purpose for which the survey is being performed;

4 (iii) the name of the employer of the professional land surveyor;

5 (iv) the identity of the professional land surveyor;

6 (v) the dates, times, and location of entry to the land, including the estimated number of entries;

7 (vi) a timetable for completion of the survey, including an estimated completion date; and

8 (vii) a statement requesting the landowner to provide the surveyor with the name of each person who
9 occupies the land as a tenant or lessee.

10 (b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

11 (c) This section does not impose liability upon a landowner who fails or refuses to provide the requested
12 entry.

13 (4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under
14 subsection (1) may enter the land pursuant to the specifications given in the notice.

15 (b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the
16 access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the
17 survey.

18 (5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their
19 person identification sufficient to identify themselves and their employer or principal and shall present the
20 identification upon request.

21 (6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for
22 other vehicular access is granted by the landowner.

23 (7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

24 (8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this
25 section to wash any vehicle prior to entry in order to remove mud and debris that might carry noxious weeds or
26 noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect
27 the vehicle under the terms of this subsection.

28 (9) Entry upon land for survey purposes by a person qualified under subsection (1) creates a rebuttable
29 presumption that the landowner or lessee properly protected the person against personal injury or property
30 damage while the person was on the land.

(10) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded."

Section 35. Section 70-22-103, MCA, is amended to read:

"70-22-103. Definitions. Except when the context indicates a different meaning, ~~terms as~~ terms as used in this part ~~must be defined as follows~~ the following definitions apply:

(1) ~~An "accessory~~ "Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

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

~~(3)(2)~~ A "corner" "Corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

~~(4)(3)~~ A "monument" "Monument" means an accessory that is presumed to occupy the exact position of a corner.

~~(5)(4)~~ A "property "Property controlling corner" for a property means a public land survey corner or any property corner that does not lie on a property line of the property in question but that controls the location of one or more of the property corners of the property in question.

~~(6)(5)~~ A "property "Property corner" means a geographic point on the surface of the earth and is on, is a part of, and controls a property line.

~~(7)(6)~~ A "public "Public land survey corner" means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

~~(8)(7)~~ A "reference "Reference monument" means a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and that serves to witness the corner.

~~(9)(8)~~ A "surveyor" "Surveyor" means a person who is ~~licensed to~~ nationally accredited to practice land surveying ~~under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under~~

1 Title 37, chapter 67, to practice land surveying."

2
3 **Section 36.** Section 70-22-107, MCA, is amended to read:

4 **"70-22-107. Form and contents of record -- ~~board to prescribe~~ -- form filing.** (1) ~~The board shall by~~
5 ~~regulation provide and prescribe the information which shall be necessary to be included in the corner record;~~
6 ~~and the board shall prescribe the form in which such corner record shall be presented and filed is:~~

7 (a) a description or quotation of those portions of the original or subsequent record used in evaluating
8 the corner position, including:

9 (i) the general land office field notes, which form the original record for corners of government surveys
10 if available;

11 (ii) subdivision plats, certificates of survey, or other surveys of record, which form the original record for
12 nongovernmental surveys; and

13 (iii) previously filed corner records, maps and plats, or private and public records that form the
14 subsequent record. Even if not in the public record, the subsequent record may be quoted and appropriately
15 noted if known to have validity by the surveyor.

16 (b) if the original or subsequent record is unknown or not pertinent, a statement to that effect;

17 (c) a description of the original or subsequent record evidence that locates the corner position. If the
18 original or subsequent record evidence that locates the corner position cannot be reconciled with the record, the
19 surveyor shall provide a statement as to the discrepancy and an opinion of why the discrepancy has occurred.

20 (d) a statement, if no physical evidence of the original or subsequent monuments and accessories can
21 be found, as to what method was used to reestablish the lost or obliterated corner, which may include a single
22 proportion, a fence intersection, parol evidence, terrain calls, or a centerline of road;

23 (e) the measurements used to establish proportioned positions, which must be shown on the corner
24 recordation form or on a filed certificate of survey or a subdivision plat referenced on the recordation form;

25 (f) a list of all details about the corner and its location. The list is intended to help exclusively identify the
26 corner position, including size and type of monument and accessory, how the position is marked if not shown in
27 a sketch, and any distinguishing topographic calls that may be used to locate the corner.

28 (g) instructions on how to find the corner. Instructions for public land survey system corners requiring
29 recordation must include sufficient information on the form to enable subsequent surveyors to verify the corner
30 position identified on the form and to reestablish the corner position if the monument is obliterated. If possible,

the references must be to at least two identifiable accessories or surveyed dimensions to two survey monuments. References or ties to other corners are optional and may be drawn on the face of the corner record form or on the back of the form. References also may be made to a certificate of survey. If state plane coordinate values for the corner position are shown, the surveyor shall include the control upon which the values are based.

(h) a sketch of the corner showing how a found or set corner is marked or showing topography or accessory monuments found or set and their relation to the corner. Whatever format the surveyor uses must provide sufficient information to identify the corner.

(2) Each record must include:

(a) the signature of the surveyor who performed or directed the field work depicted on the corner record; and

(b) the affixed seal of the surveyor, which constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana.

(3) In filing the corner record under the survey of record index, a surveyor shall fill out the index information as completely as possible and clearly list the name, any numbers of the recorded survey, and the lot or parcel designation. The corner location diagram must have the pertinent section number and a closed circle indicating the appropriate corner position in the section.

(4) In filing a public land survey system corner, the surveyor shall complete the cross-index at the bottom of the page and list the single township and range index where the corner is filed.

(5) Optional information on the corner record include the employer and the ground party chief, but a surveyor may provide this information to help track original field note data or adjacent records."

Section 37. Section 70-22-115, MCA, is amended to read:

"70-22-115. Monument preservation. (1) A public or private entity or person shall, before engaging in activity that will or is likely to disturb or destroy a monument or the accessories to a monument, require the following activities to be performed by a nationally accredited professional land surveyor, ~~as defined in 37-67-101,~~ or a qualified person under the direct supervision of a nationally accredited professional land surveyor:

(a) locate and reference the monument or the accessories to the monument; and

(b) file a corner record showing the location of the references to the monument or to the accessories to the monument as required in 70-22-104 and 70-22-105.

(2) A public or private entity or person shall, within 30 days of completing activity that has disturbed or

1 destroyed a monument or the accessories to a monument, require the following activities to be performed by a
2 nationally accredited professional land surveyor, ~~as defined in 37-67-101,~~ or a qualified person under the direct
3 supervision of a nationally accredited professional land surveyor:

4 (a) restore or replace the monument or the accessories to the monument, using the references
5 established in subsection (1)(b); and

6 (b) file a new corner record as required in 70-22-104 and 70-22-105."
7

8 **Section 38.** Section 76-3-103, MCA, is amended to read:

9 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires
10 otherwise, the following definitions apply:

11 (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the
12 purpose of disclosing facts pertaining to boundary locations.

13 (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is
14 designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for
15 infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain
16 undeveloped.

17 (3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use,
18 reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use
19 to which the property has been devoted.

20 (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in
21 single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly
22 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this
23 chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division
24 of land is not a division of land.

25 (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to
26 review surveys and plats submitted for filing.

27 (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be
28 prepared for filing for record with the county clerk and recorder and containing all elements and requirements set
29 forth in this chapter and in regulations adopted pursuant to this chapter.

30 (7) "Governing body" means a board of county commissioners or the governing authority of a city or town

1 organized pursuant to law.

2 (8) "Immediate family" means a spouse, children by blood or adoption, and parents.

3 (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

4 (10) "Planned unit development" means a land development project consisting of residential clusters,
5 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in
6 a prearranged relationship to each other and having open space and community facilities in common ownership
7 or use.

8 (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,
9 parcels, blocks, streets, alleys, and other divisions and dedications.

10 (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout
11 of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing
12 body.

13 (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,
14 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter
15 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by
16 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

17 (14) "Registered engineer" means a person nationally accredited to practice as a professional engineer.

18 (15) "Registered surveyor" or "registered land surveyor" means a person nationally accredited to practice
19 as a professional land surveyor.

20 ~~(14)~~(16) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision
21 of land.

22 ~~(15)~~(17) "Subdivision" means a division of land or land so divided that it creates one or more parcels
23 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States
24 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise
25 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its
26 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or
27 mobile homes will be placed.

28 ~~(16)~~(18) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be
29 identified by legal description, independent of any other parcel of land, using documents on file in the records of
30 the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~ (18)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 39. Section 76-3-403, MCA, is amended to read:

"76-3-403. Monumentation. (1) ~~The board of professional engineers and professional land surveyors~~ department of labor and industry shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 40. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(2) "Board" means the board of environmental review.

(3) "Department" means the department of environmental quality.

(4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(5) "Extension of a public water supply system" means a waterline that connects two or more water

1 service lines to a water main.

2 (6) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid
3 waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be
4 transported or distributed.

5 (7) "Mixing zone" has the meaning provided in 75-5-103.

6 (8) "Public sewage system" or "public sewage disposal system" means a public sewage system as
7 defined in 75-6-102.

8 (9) "Public water supply system" has the meaning provided in 75-6-102.

9 (10) "Registered professional engineer" means a person ~~licensed~~ nationally accredited to practice as a
10 professional engineer ~~under Title 37, chapter 67.~~

11 (11) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter
12 40.

13 (12) "Reviewing authority" means the department or a local department or board of health certified to
14 conduct a review under 76-4-104.

15 (13) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building
16 requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water
17 supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

18 (14) "Sewer service line" means a sewerline that connects a single building or living unit to a public
19 sewage system or to an extension of a public sewage system.

20 (15) "Solid waste" has the meaning provided in 75-10-103.

21 (16) "Subdivision" means a division of land or land so divided that creates one or more parcels containing
22 less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be
23 sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area,
24 regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

25 (17) "Water service line" means a waterline that connects a single building or living unit to a public water
26 supply system or to an extension of a public water supply system.

27 (18) "Well isolation zone" means the area within a 100-foot radius of a water well."
28

29 **Section 41.** Section 76-8-101, MCA, is amended to read:

30 **"76-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided in 76-3-103~~(15)~~(17), the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-county government.

(4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an heir, successor, or assignee of the ownership interest.

(5) "Local reviewing authority" means a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.

(6) "Supermajority" means:

(a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;

(b) a unanimous affirmative vote of the present and voting county commissioners in counties with three county commissioners;

(c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties with five commissioners;

(d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties with more than five commissioners; or

(e) an affirmative vote of at least two-thirds of the present and voting members of the governing body of a consolidated city-county government.

(7) "Tract" means an individual parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office."

Section 42. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application -- application revisions. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

1 (a) the location and area of land to be affected by the operation, with a description of access to the area
2 from the nearest public highways;

3 (b) the names and addresses of the owners of record and any purchasers under contracts for deed of
4 the surface of the area of land to be affected by the permit and the owners of record and any purchasers under
5 contracts for deed of all surface area within one-half mile of any part of the affected area;

6 (c) the names and addresses of the present owners of record and any purchasers under contracts for
7 deed of all subsurface minerals in the land to be affected;

8 (d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

9 (e) the permanent and temporary post-office addresses of the applicant;

10 (f) whether the applicant or any person associated with the applicant holds or has held any other permits
11 under this part and an identification of those permits;

12 (g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner,
13 director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class
14 of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

15 (ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining
16 or underground-mining license or permit issued by any other state or federal agency revoked or have ever
17 forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed
18 explanation of the facts involved in each case must be attached.

19 (h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory
20 authority;

21 (i) the names and addresses of any persons who are engaged in strip-mining or underground-mining
22 activities on behalf of the applicant;

23 (j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the
24 applicant has requested a permit;

25 (k) the results of any test borings or core samplings that the applicant or the applicant's agent has
26 conducted on the land to be affected, including the nature and the depth of the various strata or overburden and
27 topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an
28 analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral
29 elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the
30 overburden, including topsoil. If test borings or core samplings are submitted, each permit application must

1 contain two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface
2 of the affected land. Each set must depict subsurface conditions at intervals the department requires across the
3 surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than
4 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with
5 the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross
6 sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other
7 excavations to be excavated during the permit period. These cross sections must also include all existing shafts,
8 entries, and haulageways.

9 (l) the name of a newspaper of general circulation in the locality of the proposed activity in which the
10 applicant will prominently publish at least once a week for 4 successive weeks after submission of the application
11 an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed
12 description of the area of land to be affected if a permit is granted. If that newspaper is not published in Montana,
13 the applicant shall also provide the name of a newspaper of general circulation in the county in which the
14 proposed operation is located that is published in Montana in which the applicant will publish an announcement
15 and description in accordance with this subsection.

16 (m) a determination of the probable hydrologic consequences of coal mining and reclamation operations,
17 both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface
18 water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions
19 and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all
20 anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made.
21 However, this determination is not required until hydrologic information on the general area prior to mining is
22 made available from an appropriate federal or state agency. The permit may not be approved until the information
23 is available and is incorporated into the application. The determination of probable hydrologic consequences must
24 include findings on:

25 (i) whether adverse impacts may occur to the hydrologic balance;

26 (ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of
27 ground water or surface water supplies;

28 (iii) whether the proposed operation may proximately result in contamination, diminution, or interruption
29 of an underground or surface source of water within the proposed permit or adjacent areas that is used for
30 domestic, agricultural, industrial, or other beneficial use; and

- 1 (iv) what impact the operation will have on:
- 2 (A) sediment yields from the disturbed area;
- 3 (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local
- 4 impact;
- 5 (C) flooding or streamflow alteration;
- 6 (D) ground water and surface water availability; and
- 7 (E) other characteristics required by the department that potentially affect beneficial uses of water in and
- 8 adjacent to the permit area.
- 9 (n) a plan for monitoring ground water and surface water, based upon the determination of probable
- 10 hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of
- 11 parameters that relate to the availability and suitability of ground water and surface water for current and
- 12 approved postmining land uses and the objectives for protection of the hydrologic balance.
- 13 (o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other
- 14 methods approved by the department, showing the manner of spoil placement, showing removal of coal volume
- 15 and overburden swell, and including:
- 16 (i) locations and elevations of tie-in points with adjacent unmined drainageways;
- 17 (ii) approximate locations of primary or highest order drainageways and associated drainage divides in
- 18 the reclaimed topography; and
- 19 (iii) projected elevations of primary drainageways and associated drainage divides and generalized
- 20 slopes with the level of detail appropriate to project the approximate original contour;
- 21 (p) the condition of the land to be covered by the permit prior to any mining, including:
- 22 (i) the land uses existing at the time of the application and, if the land has a history of previous mining,
- 23 the uses that preceded any mining;
- 24 (ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil
- 25 characteristics, topography, and vegetative cover; and
- 26 (iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as
- 27 well as the average yield of food, fiber, forage, or wood products from land under high levels of management;
- 28 (q) a coal conservation plan; and
- 29 (r) other or further information as the department may require.
- 30 (2) The application for a permit must be accompanied by maps meeting the requirements of subsections

(2)(a) through (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant species encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree species and the approximate number of each species occurring per acre on the area to be affected, and the locations generally of the various species of plants;

(m) be certified by a nationally accredited professional engineer or professional land surveyor ~~licensed as provided by Title 37, chapter 67~~; and

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must

1 be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance,
2 and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction,
3 topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which
4 proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must
5 address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is
6 anticipated that individual permits will be sought.

7 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by
8 an insurance company authorized to do business in the state, certifying that the applicant has in force for the
9 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability
10 insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements.
11 This policy must provide for personal injury and property damage protection in an amount adequate to
12 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation
13 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.
14 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until
15 all reclamation operations have been completed.

16 (6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that
17 is pending on January 1, 2004, in order to incorporate the provisions of this part.

18 (7) A permittee may apply to revise and the department may approve an application to incorporate the
19 provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be
20 revised whether or not reclamation has been completed pursuant to the reclamation plan.

21 (8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the
22 applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which
23 the major portion of mining is proposed to occur or at another accessible public office or facility approved by the
24 department."

25
26 **Section 43.** Section 82-4-303, MCA, is amended to read:

27 **"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following
28 definitions apply:

29 (1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued
30 operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

(5) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(6) "Constructor" means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings distribution systems, reclaim water systems, and monitoring instrumentation.

(7) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(10) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage facility.

(11) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.

(12) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and

1 economic viability of mineralization in those lands, if any, other than mining for production and economic
2 exploitation; and

3 (b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

4 (13) "Independent review engineer" means a licensed engineer who is a recognized expert in tailings
5 storage facility design, construction, operation, and closure.

6 (14) "Material deviation" means a failure to follow a condition in a design document, corrective action
7 plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected
8 to substantively impair a tailings storage facility from performing as intended.

9 (15) "Maximum credible earthquake" means the most severe earthquake that can be expected at a site
10 based on geologic and seismological evidence, including a review of all historic earthquake data of events
11 sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to the site.

12 (16) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel,
13 peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the
14 purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing
15 or for stockpiling for future use, refinement, or smelting.

16 (17) "Mining" commences when the operator first mines ores or minerals in commercial quantities for
17 sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing
18 in excess of the aggregate of 10,000 short tons.

19 (18) "Observational method" means a continuous, managed, and integrated process of design,
20 construction control, monitoring, and review enabling appropriate, previously defined modifications to be
21 incorporated during and after construction.

22 (19) "Operator" means a person who has an operating permit issued under 82-4-335.

23 (20) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock
24 mineral concentration processes.

25 (21) "Panel" means the tailings storage facility independent review panel created for each new or
26 expanded tailings storage facility.

27 (22) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged
28 in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste
29 materials, or operation of a hard-rock mill.

30 (23) "Placer deposit" means:

1 (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial,
2 or alluvial deposits lying above bedrock; or

3 (b) all forms of deposit except veins of quartz and other rock in place.

4 (24) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
5 persons.

6 (25) "Practicable" means available and capable of being implemented after taking into consideration cost,
7 existing technology, and logistics in light of overall project purposes.

8 (26) "Professional engineer" means a nationally accredited, registered professional engineer ~~licensed~~
9 ~~to practice in Montana under Title 37, chapter 67, part 3.~~

10 (27) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct
11 experience with the design and construction of tailings storage facilities and has the appropriate professional and
12 educational credentials to effectively determine appropriate parameters for the safe design, construction,
13 operation, and closure of a tailings storage facility.

14 (28) "Reclamation plan" means the operator's written proposal, as required and approved by the
15 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical
16 at the time of application for an operating permit:

17 (a) a statement of the proposed subsequent use of the land after reclamation, which may include use
18 of the land as an industrial site not necessarily related to mining;

19 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the
20 land after reclamation is completed and the proposed method of accomplishment;

21 (c) the manner and type of revegetation or other surface treatment of disturbed areas;

22 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public
23 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

24 (e) the method of disposal of mining debris;

25 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent
26 pollution of those waters or unnecessary erosion;

27 (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and
28 pollution;

29 (h) maps and other supporting documents that may be reasonably required by the department; and

30 (i) a time schedule for reclamation that meets the requirements of 82-4-336.

(29) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

(30) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (30)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(31) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(32) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(33) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.

(34) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.

(b) The term does not include a facility that:

(i) stores 50 acre-feet or less of free water or process solution;

(ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution or underground mines that use tailings as backfill; or

(iii) stores dry stack or filtered tailings.

(35) "Underground mining" means all methods of mining other than surface mining.

(36) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(37) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 44. Section 85-15-106, MCA, is amended to read:

"85-15-106. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means an artificial barrier, including appurtenant works, used to impound or divert water.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means a threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a nationally accredited, registered professional engineer ~~licensed to practice in the state of Montana under Title 37, chapter 67, part 3.~~

(8) "Enlargement" means a change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means a person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or other entity or authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of a dam or reservoir.

(14) "Reservoir" means a valley, basin, coulee, ravine, or other land area that contains impounded water."

NEW SECTION. Section 45. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1756. Board of public accountants.

- 1 2-15-1757. Board of realty regulation.
2 2-15-1763. Board of professional engineers and professional land surveyors.

3

4 NEW SECTION. **Section 46. Repealer.** The following sections of the Montana Code Annotated are
5 repealed:

- 6 37-50-101. Definitions.
7 37-50-102. Exemptions.
8 37-50-201. Organization -- general rulemaking power -- seal -- records.
9 37-50-202. Compensation of members -- expenses.
10 37-50-203. Rules of board.
11 37-50-204. Rulemaking powers relating to examinations.
12 37-50-205. Duties of the department.
13 37-50-209. Enterprise fund.
14 37-50-210. Deposit of money collected.
15 37-50-301. Illegal use of title.
16 37-50-302. Certified public accountants -- licensure -- qualifications and requirements.
17 37-50-305. Education requirements.
18 37-50-309. Credit for examinations taken in other jurisdictions.
19 37-50-314. License required -- proof of licensure.
20 37-50-316. Other license fees prohibited.
21 37-50-318. Existing license or certificate transition.
22 37-50-325. Practice privilege for nonresident certified public accountant -- rules.
23 37-50-330. Compliance with ownership requirements -- firm registration.
24 37-50-335. Registration of firms -- exemptions.
25 37-50-341. Initiation of proceedings -- hearings and rulemaking.
26 37-50-342. Violation.
27 37-50-401. False statements by certified public accountants -- misdemeanor -- penalty.
28 37-50-402. Privileged communications -- exceptions.
29 37-50-403. Nonliability -- evidential privilege -- application to nonprofit corporations.
30 37-51-102. Definitions.

- 1 37-51-103. Exemptions.
- 2 37-51-104. Chapter supplemental to deceptive practices law.
- 3 37-51-105. Sexual or violent offender registration information -- responsibility of broker or salesperson.
- 4 37-51-201. Presiding officer -- seal -- records -- prohibition on membership in real estate associations.
- 5 37-51-202. General licensing power.
- 6 37-51-203. Rulemaking power.
- 7 37-51-204. Educational programs.
- 8 37-51-205. Compensation of members -- expenses.
- 9 37-51-207. Schedule of fees.
- 10 37-51-208. Deposit of money not otherwise provided for.
- 11 37-51-209. Executive secretary -- hiring and duties.
- 12 37-51-301. License required -- limited to persons.
- 13 37-51-302. Broker's or salesperson's license -- qualifications of applicant -- supervising broker endorsement.
- 14 37-51-303. Broker or salesperson examination.
- 15 37-51-305. License -- delivery -- display -- pocket card.
- 16 37-51-306. Transactions with nonresidents and with nonlicensed brokers, salespersons, or property
17 managers -- consent to legal process.
- 18 37-51-308. Broker's office -- notice to department of change of address.
- 19 37-51-309. Broker -- salesperson -- for sale by owner personal transactions of salesperson -- notice to
20 department of change of association.
- 21 37-51-311. Fees -- deposit of fees.
- 22 37-51-312. No taxation by municipality.
- 23 37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or
24 seller.
- 25 37-51-314. Relationship disclosure requirements.
- 26 37-51-315. Vicarious liability.
- 27 37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.
- 28 37-51-323. Penalties -- criminal -- civil.
- 29 37-51-324. Penalty for failure to comply with trust account requirements.
- 30 37-51-401. Action for compensation limited to licensed broker or salesperson.

- 1 37-51-601. License required to manage property.
2 37-51-602. Exemptions from requirement of property manager license.
3 37-51-603. Qualification of property manager applicants -- examination -- form of licenses.
4 37-51-605. Property manager's office -- notice of change of address.
5 37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees.
6 37-51-608. Penalties -- criminal -- civil.
7 37-53-101. Short title.
8 37-53-102. Definitions.
9 37-53-104. Rulemaking authority.
10 37-53-201. Registration of timeshare offering required.
11 37-53-202. Application for registration.
12 37-53-203. Notice of changes in timeshare offering.
13 37-53-204. Alternative filing documents.
14 37-53-205. Exemption from registration.
15 37-53-213. Waiver of liability.
16 37-53-301. Licensure of timeshare salespersons -- licensee duties.
17 37-53-302. Denial, suspension, or revocation of license or application.
18 37-53-303. Public offering statement.
19 37-53-304. Disclosure to purchaser -- cancellation of agreement.
20 37-53-305. Transfer of developer's interest.
21 37-53-306. Good faith requirement -- prohibited provisions.
22 37-53-307. Illegal practices.
23 37-53-308. Civil liability.
24 37-53-506. Criminal proceedings.

25

26 NEW SECTION. **Section 47. Repealer.** The following sections of the Montana Code Annotated are
27 repealed:

- 28 37-66-101. Short title.
29 37-66-102. Purpose.
30 37-66-103. Definitions.

- 1 37-66-104. Acts declared unlawful.
- 2 37-66-105. Exemptions.
- 3 37-66-301. License required.
- 4 37-66-302. Illegal use of title.
- 5 37-66-303. Licensing restricted to individuals -- partnerships -- local business licensing.
- 6 37-66-304. Qualifications and application for licensure.
- 7 37-66-308. Display of license -- seal of landscape architect.
- 8 37-66-309. Deposit of license fees.
- 9 37-66-322. Penalty.
- 10 37-67-101. Definitions.
- 11 37-67-102. Representation as practitioner to be considered as practice.
- 12 37-67-103. Exemptions.
- 13 37-67-201. Organization -- meetings -- seal.
- 14 37-67-202. Rulemaking.
- 15 37-67-203. Compensation of board members -- expenses.
- 16 37-67-204. Record of proceedings -- register of applicants.
- 17 37-67-301. License required to practice or offer to practice.
- 18 37-67-304. Local government not to impose fee or examination.
- 19 37-67-312. Licensure of professional engineers without examination by comity.
- 20 37-67-313. Licensure of professional land surveyors by comity.
- 21 37-67-314. Issuance of licenses -- seal of professional engineer or professional land surveyor.
- 22 37-67-317. Deposit of moneys collected.
- 23 37-67-322. Application -- contents -- fees.
- 24 37-67-323. Qualifications of applicant for examination and licensure as professional engineer.
- 25 37-67-324. Qualifications of applicant for certification as engineer intern.
- 26 37-67-325. Qualifications of applicant for examination and licensure as professional land surveyor.
- 27 37-67-326. Qualifications of applicant for examination and certification as land surveyor intern.
- 28 37-67-327. Examinations -- fees -- third-party services.
- 29 37-67-328. Certificate of authorization.
- 30 37-67-329. Emeritus status.

1 37-67-331. Revocation, suspension, restriction, or limitation of license -- grounds.

2 37-67-332. Violations -- penalties -- enforcement.

3

4 NEW SECTION. **Section 48. Repealer.** The following section of the Montana Code Annotated is
5 repealed:

6 76-3-411. Board to prescribe standards.

7

8 NEW SECTION. **Section 49. Repealer.** The following sections of the Montana Code Annotated are
9 repealed:

10 37-51-501. Real estate recovery account established -- minimum balance -- interest.

11 37-51-502. Initial licensure and additional assessment.

12 37-51-503. Claims against fund -- orders for payment.

13 37-51-504. Form of application.

14 37-51-505. Motion to dismiss application.

15 37-51-506. Hearing on application.

16 37-51-507. Payment from account.

17 37-51-508. Limitation of payment -- pro rata distribution.

18 37-51-509. Claims satisfied in order of filing.

19 37-51-510. Deposits by board.

20 37-51-511. Subrogation rights of board.

21 37-51-512. Other disciplinary powers unimpaired -- effect of repayment to fund.

22

23 NEW SECTION. **Section 50. Transfer of funds.** The money in the real estate recovery account
24 provided for in 37-51-501 must be transferred to the real estate recovery account provided for in [section 2] on
25 or immediately after [the effective date of this section].

26

27 NEW SECTION. **Section 51. Codification instruction.** [Sections 1 through 3] are intended to be
28 codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply
29 to [sections 1 through 3].

30

NEW SECTION. **Section 52. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2019.

(2) [Sections 1, 2, 16, 28, and 49 through 53] are effective on passage and approval.

NEW SECTION. **Section 53. Termination -- fund transfer.** [Sections 1, 2, and 16] terminate September 30, 2019, and, after payment of credible outstanding applications, as determined by the department of justice, any remaining money in the real estate recovery account must be transferred to the general fund.

- END -