

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.101.413 renewal dates and)
requirements, 24.183.301 definition of)
responsible charge, 24.183.402)
board meetings, 24.183.404 fee)
schedule, 24.183.501 approval of)
schools, 24.183.503 application)
references, 24.183.509 examination)
procedures, 24.183.510 grant and)
issue licenses, 24.183.701 and)
24.183.801 comity, 24.183.702 and)
24.183.802 classification of)
experience, 24.183.1001 form of)
corner records, 24.183.1101 uniform)
standards for monumentation,)
24.183.1107 uniform standards for)
final subdivision plats, the adoption of)
NEW RULE I remonumentation and)
rehabilitation, II architectural services)
incidental to engineering, III exhibits)
of land surveying projects, IV)
unprofessional conduct, and the)
repeal of 24.183.2201 introduction,)
24.183.2203 performance of services,)
24.183.2204 conflicts of interest,)
24.183.2205 avoidance of improper)
solicitation, and 24.183.2206)
issuance of public statements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 17, 2014, at 1:00 p.m., a public hearing will be held in Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on Friday, July 11, 2014, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park

Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpels@mt.gov (board's e-mail).

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ac) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ad)	Professional Engineers and Professional Land Surveyors	Certificate of Authorization	Annually	October 1
		Emeritus Status		
		Engineer Intern	Indefinite <u>Biennially, as of June 30, 2015</u>	<u>June 30</u>
		Land Surveyor Intern	None, Indefinite <u>Biennially, as of June 30, 2015</u>	<u>June 30</u>
		Professional Engineer	Biennially, Even Numbered Years	June 30
		Professional Engineer by Comity	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor by Comity	Biennially, Even Numbered Years	June 30

(ae) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
 IMP: 37-1-101, 37-1-141, MCA

REASON: The board determined it is reasonably necessary to establish a renewal process for engineer intern and land surveyor intern certificates. With input from the DLI BSD Licensing Bureau, the department is amending this rule to provide for the renewal of these certificates at two-year intervals, dating from the initial issuance of the certificate. Renewal of these certificates will be staggered, with roughly half in

odd-numbered years, and the remainder in even-numbered years. The renewal date will be June 30, the same as professional engineers and professional land surveyors.

4. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.183.301 DEFINITION STANDARDS OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS (1) The term "responsible charge" directly relates to the degree of control ~~a licensee~~ an engineer is required to maintain while exercising independent control and direction of engineering ~~or land surveying work,~~ and to the decisions which can be made only under the direct supervision of a professional engineer ~~or a professional land surveyor.~~

(a) The degree of control necessary to be in responsible charge shall be such that ~~the~~ a licensee:

(i) personally makes engineering ~~or land surveying~~ decisions, or reviews and approves proposed decisions prior to their implementation, including consideration of alternatives, whenever technical decisions are made. In making engineering ~~or land surveying~~ decisions, ~~the~~ a licensee must be physically present or through the use of communication devices, can be available in a reasonable period of time; and

(ii) remains the same.

(b) To be considered in responsible charge of a project, ~~the professional~~ a licensee who signs engineering ~~or land surveying~~ documents must be capable of answering questions asked by equally qualified professionals. These questions would be relevant to the decisions made during ~~the individual's~~ a licensee's participation in the project and require responses in sufficient detail to leave little question as to ~~the~~ a licensee's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that ~~the individual~~ a licensee in responsible charge made the decisions and possessed sufficient knowledge of the project to make the decisions.

(i) ~~examples~~ Examples of questions to be answered by ~~the~~ an engineer could relate to criteria for design, methods of analysis, methods of manufacture and construction, selection of materials and systems, economics of alternate solutions, and environmental considerations. ~~The individual~~ A licensee should be able to clearly define the degree of control and how it is exercised within the organization and geographically, and to demonstrate that ~~the~~ an engineer is answerable within that degree of control.

~~(ii) examples of questions to be answered by the land surveyor could relate to criteria for design, methods of analysis and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deeds, application of proportion methods and analysis of evidence related to unwritten property rights. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to demonstrate that the land surveyor is answerable within that degree of control.~~

(2) The term "responsible charge" means that a land surveyor is required to maintain independent control over all facets of land surveying work.

(a) The degree of control necessary to be in responsible charge shall be such that a licensee personally makes land surveying decisions. In making land surveying decisions, a licensee must be physically present or able to provide verifiable evidence of personal knowledge of the land surveying work.

(b) To be considered in responsible charge of a project, a licensee who signs land surveying documents must be capable of defending the contents of the resulting documents by addressing issues related to the documents. Examples of issues include, but are not limited to:

- (i) criteria for designs;
- (ii) methods of analysis and conclusions made;
- (iii) performance of surveys;
- (iv) interpretation and construction of deeds;
- (v) application of proportion methods; and
- (vi) analysis of evidence related to unwritten property rights.

(c) A licensee should be able to clearly define the degree of control and how it is exercised within the organization and geographically, and to demonstrate that a land surveyor is answerable within that degree of control.

AUTH: 37-67-202, MCA
IMP: 37-67-101, MCA

REASON: The board is amending this rule for clarity after noting that the current rule contains only a single provision that applies equally to professional engineers and professional land surveyors. The board is amending the rule to separate and differentiate the provisions between those standards of responsible charge for professional engineers in (1) and those that apply to professional land surveyors in (2). The board is also amending the catchphrase of this rule to more accurately describe the intent and purpose of the rule.

24.183.402 BOARD MEETINGS (1) The board shall hold at least two meetings annually, with ~~ten days~~ public notice as prescribed by the Department of Labor and Industry, and as called by the presiding officer.

AUTH: 37-67-202, MCA
IMP: 37-67-201, MCA

REASON: The board is amending this rule to remove outdated language and rely strictly on the department's standards for meeting notice.

24.183.404 FEE SCHEDULE (1) through (3)(c) remain the same.

- (i) Initial application 50 100
- (ii) and (3)(d) remain the same.
- (i) Initial application 50 100
- (ii) ~~Reexamination-only~~ Examination and reexamination for Montana law specific exam 50 100
- (iii) remains the same.
- (iv) Application by comity ~~which includes Montana law specific exam~~ 200

(e) remains the same.	
(i) Initial application	60 <u>100</u>
(ii) remains the same.	
(iii) Certificate of authorization late renewal	25
(f) remains the same.	
(i) Professional engineer	90 <u>100</u>
(ii) Professional land surveyor	90 <u>100</u>
(iii) Dual license as a professional engineer and land surveyor	440 <u>120</u>
<u>(iv) Renewal fee for EI, LSI</u>	<u>25</u>
(g) remains the same.	
(i) Emeritus application	\$25
(ii) and (iii) remain the same.	
(iv) Reexamination fee for PE, PLS, LSI, EI <u>PS, FS</u>	25
(v) Exam reschedule fee for PE, PLS, LSI, EI <u>PS, FS</u>	25
(vi) and (4) remain the same.	

AUTH: 37-1-134, 37-67-202, 37-67-311, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-311, 37-67-312, 37-67-313, 37-67-320, 37-67-321, MCA

REASON: In providing administrative services to the board, the department advised the board that costs of application reviews have increased. The board concluded that a small increase in all initial license application fees is appropriate and commensurate with the costs of application processing.

The board is implementing a new state-specific land surveyor examination later in 2014 and will enter into a contract with a vendor for grading, examinee diagnostics, and examination evaluation. The board is increasing the examination and reexamination fee in (3)(d)(ii) as the contract will require a higher exam fee.

The board is amending (3)(d)(iv) to separate the Montana law specific exam for land surveyors from the application by comity fee, and move the exam fee to (3)(d)(ii). Because the application process and administration of the state LS exam are separate actions, the board determined they should have separate, discrete fees. The board believes this amendment will also address the possible situation where an LS applicant may apply, sit for, and pass the NCEES PS exam, but then pursue licensure in another state and not take the Montana law specific exam.

It is reasonably necessary to strike (3)(e)(iii) and eliminate the late renewal fee for certificates of authorization. The board notes that all late renewal fees are addressed in department rule at ARM 24.101.403, and that this fee will remain the same following this amendment.

In budget discussions on matching revenues to expenses, the board concluded that a modest increase in renewal fees for engineers and land surveyors is appropriate to ensure the board's financial viability in the future. The board is therefore amending (3)(f)(i)-(iii) to slightly increase renewal fees and keep fees commensurate with associated costs of processing license renewals.

In this notice, the board is amending rules to establish a renewal process for engineer intern and land surveyor intern certificates. The board determined it is reasonably necessary to set a fee in (3)(f)(iv) commensurate with the costs to

establish the renewal process, create computer-based renewal systems, and any personnel costs associated with these renewals.

The board is amending (3)(g)(iv) and (v) to accurately set forth the names of the acceptable exams. As well, since the board no longer approves examinees for the Fundamentals of Engineering exam (EI), the board is removing the exam from the list.

The board anticipates that all proposed fee increases will affect approximately 9,740 licensees and applicants and will generate \$168,860 in additional revenue.

24.183.501 APPROVAL OF SCHOOLS BOARD-APPROVED CURRICULA

(1) remains the same.

(2) The board-approved curriculum for land surveying applicants shall contain a minimum of 60 semester credits and must include seven credits in English, seven credits in math, six credits in drafting, nine credits in basic science, five credits in humanities and social sciences, 11 credits in surveying techniques, and 16 credits in principles and practice of land surveying courses. One academic quarter's credit shall be credited at two-thirds semester credit.

~~(2) (3) The board will shall make a list available that shows the of Montana schools offering which offer land surveying curricula acceptable to~~ accepted by the board. All course credits acceptable accepted as transferable to the land surveying curricula of any school approved by the board will shall be acceptable accepted by the board when transfer is accomplished by the applicant.

AUTH: 37-67-202, MCA

IMP: 37-67-306, MCA

REASON: The board determined it is reasonably necessary to add (2) and clearly set forth in rule the approved land surveying curriculum, rather than allow it to remain a policy subject to frequent change and/or challenges. The board is further amending the rule for clarity, better organization, and improved grammar. The board is amending the title or catchphrase to more accurately reflect the purpose of the rule to implement the board's statutory authority to approve curricula, not approve the schools at which curricula are taught.

24.183.503 APPLICATION REFERENCES (1) The applicant shall arrange for the submission of completed reference forms as described in 37-67-305 and/or 37-67-308, MCA. The application must include a reference form, which the applicant shall provide to the references listed on the application. The reference form must be received directly from the ~~applicants'~~ applicant's references. ~~For each working engagement listed showing experience, at least one individual shall serve as a reference for that engagement.~~

~~(2) No reference will be accepted by the board, unless the~~ The board will accept a reference form only when it is fully completed and bears the signature of the reference. Until such time as the required All completed and signed reference forms are must be received, before the board will not take action on the application.

AUTH: 37-67-202, MCA

IMP: 37-67-303, 37-67-305, 37-67-308, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate confusion over applicant references and the naming of supervisors for working engagements, and clarify the board's intent that references actually have knowledge of the applicant. The board discovered that current rule language may lead applicants to believe every reference must be a supervisor, when the reference could be a non-supervisory co-worker or another professional colleague familiar with the applicant's work. Additionally, a supervisor from a working engagement may be deceased or cannot be located.

24.183.509 EXAMINATION PROCEDURES (1) remains the same.

~~(2) Applicants will be notified of the time and place of examination at least 30 days in advance. The applicant will not be allowed to reschedule the examination without approval by board staff or a board designee. An applicant will be required to pay an exam reschedule fee if they wish to reschedule their examination 30 days after receipt of their original exam notification letter.~~ Applicants for the Fundamentals of Engineering exam may register directly with the National Council of Examiners for Engineering and Surveying (NCEES) without prior approval of the board and may take the examination at any location offered by NCEES. NCEES shall schedule the exam and collect all required fees, including fees for rescheduling an exam.

~~(3) An applicant~~ Applicants for the Fundamentals of Land Surveying, Principles and Practices of Engineering, and Principles and Practices of Land Surveying exams who is are approved by the board ~~must~~ may take the examination at a any location in Montana offered by NCEES.

~~(4)~~ Applicants will be notified of the time and place of the exam by NCEES. An applicant who wishes to reschedule an exam other than the Fundamentals of Engineering exam, shall pay an exam reschedule fee to the board.

~~(4) (5)~~ A passing grade set by ~~the National Council of Examiners for Engineering and Surveying (NCEES)~~ NCEES will be required.

~~(5) (6)~~ A candidate failing to pass any examination exam, other than the Fundamentals of Engineering exam, may take that examination again upon payment of the reexamination fee specified by ARM 24.183.404.

~~(6) (7)~~ The examinee who has failed the Montana law state specific examination may review the examination in the board office within 60 days after being notified of the status. Note taking will be allowed during the time of review, but the notes must be left in the board office. An examinee who fails the Montana state-specific land surveyor exam may request a diagnostic report on the exam results within 60 days after the date of notification of the failure.

~~(7) The Montana law state specific examination will be retained in the examinee's file for a period of one year, and then destroyed.~~

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-1-134, 37-67-311, MCA

REASON: The board recently decided to allow examinees for the NCEES Fundamentals of Engineering exam to register directly with NCEES without prior

approval by the board. The board determined it is reasonably necessary to amend this rule to comport with a 2013 letter of agreement with NCEES regarding the provision of examination services. The board is also responding to requests that access to the FE exam be expanded to candidates the board previously did not approve. The board intends for this rule to clearly state which examinees must be approved by the board prior to the exam, and those who may register directly with NCEES. By doing so, the board's standards will not be subject to sudden, frequent, or arbitrary change through board policies or motions.

The board is amending (7) to adjust post-exam procedures for examinees who fail the board's new state-specific land surveyor exam, which was approved at the board's November 2013 meeting. Following amendment, examinees who fail the state exam will not be able to review their exam, but instead will receive a diagnostic report showing their performance per subject area. The board concluded that allowing examinees to review specific failed exam questions, with the opportunity to retake the same exam, is too lenient. The board also believes it is reasonable to adopt a review process similar to the NCEES post-exam procedure.

Finally, the board is deleting old (7) to eliminate the requirement to retain state-specific exams for one year prior to destruction. This change will allow the department to dispose these exams under normal records retention schedules.

24.183.510 GRANT AND ISSUE LICENSES AND CERTIFICATES (1) At the time an applicant ~~has met~~ meets the requirements for licensure by the board, the applicant will be assigned a license number and issued a license as a professional engineer and/or professional land surveyor as appropriate. These numbers will be issued consecutively in the order in which the applications are approved by the board. The applicant will be advised of the license number in the notice sent to the applicant.

(2) The engineer intern ~~license~~ certificate will be ~~valid for six~~ active for two years ~~and may be renewed for additional two-year periods for a fee prescribed in ARM 24.183.404.~~ Upon termination of the license, the board will dispose of the application according to department policy. Pursuant to an agreement with the National Council of Examiners for Engineering and Surveying (NCEES), the board has agreed to retain examination scores. Upon request, the individual may obtain the national exam score and verification for a fee prescribed by the ~~board~~ department.

(3) The land surveyor intern certificate will be valid for two years and may be renewed for additional two-year periods for a fee prescribed in ARM 24.183.404.

~~(3)~~ (4) A license authorizing the practice of professional engineering or professional land surveying by a sole proprietorship, firm, partnership, or corporation ~~will~~ shall be granted by the board and issued by the department after approval of an application for a certificate of authorization and payment of the license fee. A will certificate shall be signed by the presiding officer ~~and the secretary~~ and shall bear the license number of the licensee, sole proprietorship, firm, partnership, or corporation.

(5) All licenses and certificates identified through this rule shall be subject to lapse, expiration, and termination under 37-1-141, MCA, and ARM 24.101.413.

AUTH: 37-1-131, 37-67-202, MCA
IMP: 37-67-305, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-320,
MCA

REASON: The board determined it is reasonably necessary to amend this rule to use the term "certificate," instead of "license," and align with relevant statutes in Title 37, chapter 67, part 3, MCA. Interns are not issued licenses to practice, but instead receive certificates that recognize passage of the appropriate fundamentals exams and evidence of additional intern qualifications.

The board determined it is reasonably necessary to amend (2) and add (3) to create two-year renewable certificates for both EIs and LSIs. Currently LSI certificates have a perpetual life and EI certificates were perpetual until 2012 when the board changed them to a six-year length with no renewal. This amendment addresses numerous communications from EIs whose certificates had terminated and who were concerned the termination would adversely affect their ability to work in engineering firms or apply for professional licensure. The board concluded that it is reasonable to allow renewal for both EI and LSI certificates, and selected a 2-year cycle to be consistent with the renewal periods of licensed engineers and land surveyors.

The board is removing the requirement for the board secretary to sign wall certificates issued to new licensees, as the board concluded that the presiding officer's signature is adequate.

The board is adding (5) following a suggestion by staff that such a reminder, especially with the implementation of intern renewals, will address any questions and clarify that certificates are treated the same as licenses when it comes to renewal.

24.183.701 COMITY CONSIDERATION FOR PROFESSIONAL ENGINEERS (1) The board may, upon receipt of an application and payment of proper fee, issue a license as a professional engineer, to any person who submits a national council record issued to the person by proper authority of the National Council of Examiners for Engineering and Surveying (NCEES), or verification of licensure from any state or territory or possession of the United States, or any country, provided that the applicant's qualifications meet the requirements of the law and of the rules established by the board. Such applicants shall, as part of their application, complete and send to the department the standard application form. Applicants who have a current council record must complete only the following sections of the application for registration as a professional engineer: Applicants shall submit to the department, either electronically or by mail, the department-approved application form with the appropriate fee and a completed engineer laws and rules questionnaire.

~~(a) general information;~~

~~(b) licensure in other states;~~

~~(c) affidavit; and~~

~~(d) a completed engineer laws and rules questionnaire.~~

(2) Applicants with a National Council of Examiners for Engineering and Surveying (NCEES) record may arrange for NCEES to deliver their most current

record directly to the board office. An applicant with a current NCEES record is not required to submit references or educational transcripts.

~~(2) (3) Professional engineers applying by comity without an a NCEES record are required to complete all sections of the application. The following are also required shall submit to the department, either electronically or by mail, the department-approved application form with the appropriate fee and the following:~~

- ~~(a) educational transcripts;~~
- ~~(b) five completed reference forms as required by ARM 24.183.503; and~~
- ~~(c) verification of taking and licensure from all states and verification of passing both the fundamentals Fundamentals of engineering Engineering (FE) examination and principles the Principles and practice Practices of engineering Engineering (PPE) examination, from the state of original licensure; and~~
- ~~(d) a completed engineer laws and rules questionnaire.~~

AUTH: 37-67-202, MCA

IMP: 37-1-304, 37-67-312, MCA

REASON: The board is amending this rule to clearly and separately set forth the application requirements for those professional engineers seeking licensure by comity who hold or do not hold NCEES records. In the proposed amendments, the board is altering and clarifying the documentation that NCEES-holders need not provide, and concluded that reorganizing this rule will help accomplish this.

The board is also amending this rule to require all comity applicants to submit complete Montana applications, including experience forms. The board determined that the NCEES record does not adequately evaluate progressive experience since the record contains experience dates, but no information as to quality of the experience. The board notes that progressive experience is required under 37-67-306, MCA.

The board is amending (1) to remove the ability of licensure by comity for engineers licensed in countries other than the United States. The board believes that the method of licensing professional engineers in the United States is superior to that of other countries by virtue of the rigor of educational standards and exams. Following years of frustration and discussion, the board has now crafted rule language that matches their intent in this area of licensure. The board concluded that engineers licensed in other countries who have not passed the NCEES PE exam must apply as exam candidates and pass that exam for licensure.

The board is amending (3) to clearly reflect in rule the current application requirement of verification of licensure in other states. To reflect the reality that engineers may have taken the FE exam in one state and the PPE in another, the board is amending (3) to no longer require comity applicants without NCEES records to submit proof of passing these exams in their states of original licensure. The board notes that this practice will become more common with the new computer-based FE exam and concluded that it is not necessary to limit licensure to only those applicants who took both exams in their first licensing states.

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) Engineering experience for the purpose of application for licensure shall include be classified as the following:

(a) Subprofessional experience is experience gained before graduation receipt of a baccalaureate degree. This Such experience may be gained during periods of college or university enrollment, and shall be credited to the required preprofessional experience at a maximum of one-half the period of experience at one-half the time value of preprofessional experience gained after receipt of a baccalaureate degree. Subprofessional experience shall be limited to no more than one year of preprofessional experience. No more than one year of subprofessional experience may be counted as preprofessional experience. Credible subprofessional Such preprofessional experience may include one or more of the following:

(i) supervised engineering experience, supervised; or

(ii) supervised construction experience, supervised.

(b) Preprofessional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible gained following receipt of a baccalaureate degree. Such preprofessional experience may include:

(i) approved no more than one year of subprofessional experience as defined in (a);

(ii) through (vi) remain the same.

(vii) successful completion of graduate study leading to the a master's degree in engineering, which has followed a baccalaureate degree in engineering, as credit for will be credited as one year's year of experience; If the Ph.D. in engineering is completed under the same conditions, two year's total experience may be credited, including the one year credited for the master's degree, in the two year's total. If the Ph.D. is obtained without the master's degree, two year's experience may be credited.

(viii) a Ph.D. in engineering will be credited as two years of experience, but the applicant shall not count an additional one year for a master's degree, if earned. All degrees shall have been obtained from colleges or universities with board-approved programs.

(c) Professional experience is gained after initial licensure by a state, territory, or possession of the United States.

(2) Experience All experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.

(3) Experience should be gained under the supervision of a registered professional engineer or and, if not, an explanation should be made showing why the experience should be considered acceptable.

(4) Upon request by the board, an applicant must demonstrate knowledge of fundamental principles of engineering design and the practical solution of engineering problems. Engineer applicants may be asked by the board to provide a more detailed explanation of their knowledge of fundamental principles of engineering design and the practical solution of engineering problems.

AUTH: 37-67-202, MCA

IMP: 37-67-305, 37-67-306, 37-67-309, MCA

REASON: The board determined that the current wording and organization of this rule is confusing for applicants, licensees, and board members as well. Therefore, the board is amending the rule throughout to more clearly delineate and explain the classifications of engineering experience.

The board is adding (1)(c) to further clarify for PE by comity applicants and staff how required experience is broken down and what kinds of experience fit into which categories.

Implementation citations are amended to accurately reflect all statutes implemented through the rule.

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) ~~Licensed land surveyors from any state or territory or possession of the United States, or of any country, can apply for comity consideration. Comity applicants shall meet the minimum requirements of the law and rules established by the board. Applicants shall complete and send to the department the standard application and appropriate fees based on one of~~ The board may, upon receipt of application and payment of proper fee, issue a license as a professional land surveyor to any person who submits verification of licensure from any state or territory or possession of the United States. All applicants shall complete and submit, either electronically or by mail, the department-approved application form with the appropriate fee, and a completed land surveyors laws and rules questionnaire, and the following:

(a) college or university transcripts, when applicable;
(b) five completed reference forms as required by ARM 24.183.503; and
(c) verification of licensure from the state of original licensure, including verification of passing both the Fundamentals of Land Surveying examination and Principles and the Practices of Land Surveying examination.

~~(a) (2) Applicants who have a current National Council of Examiners for Engineering and Surveying (NCEES) record must request a copy of their record be sent to the board office. In addition, they must complete only the following sections of the application for licensure as a professional land surveyor: may arrange for NCEES to deliver their most current record directly to the board office.~~

~~(i) general information;~~
~~(ii) licensure in other state;~~
~~(iii) affidavit; and~~
~~(iv) the land surveyor laws and rules questionnaire.~~
~~(b) If the comity applicant does not have a NCEES record, the entire application must be completed and submitted. The applicant shall submit the following within three months of the boards' receipt of a completed application:~~
~~(i) college or university transcripts when applicable;~~
~~(ii) five completed reference forms as required by ARM 24.183.503;~~
~~(iii) verification of licensure from state of original licensure which includes verification of passing the fundamentals of land surveying and principles and practices of land surveying examinations; and~~
~~(iv) the land surveyors laws and rules questionnaire.~~

~~(2) (3) Once approved~~ Upon approval of the application by the board, all the comity applicants shall pass a closed book, state-specific, land surveying examination with a score of 70 percent or more.

AUTH: 37-67-202, MCA

IMP: 37-1-304, 37-67-313, MCA

REASON: The board is amending this rule to clarify the application requirements for professional land surveyors seeking licensure by comity, and is reorganizing this rule to facilitate this.

The board is also amending this rule to require all land surveyor comity applicants to submit complete Montana applications, including experience forms. The board does not consider the content of NCEES records as equivalent to the information provided through the department's license application forms. The board also concluded that the NCEES record does not adequately evaluate progressive experience since the record contains dates of experience, but no information as to quality of the experience. The board notes that progressive land surveying experience is required under 37-67-309, MCA.

The board is amending (1) to remove the ability of licensure by comity for land surveyors licensed in countries other than the United States. The board believes that the method of licensing professional land surveyors in the United States is superior to that of other countries by virtue of the rigor of educational standards and exams. Following years of frustration and discussion, the board has now crafted rule language that matches their intent in this area of licensure. The board concluded that land surveyors licensed in other countries who have not passed the NCEES PLS exam must apply as exam candidates and pass that exam for licensure.

The board is also amending (2) to no longer accept certain ancillary documents to be submitted within three months of the application submission. The board is unsure why this process was ever in place, and notes that applications would never be considered complete without these documents. This change also aligns with licensure procedures of the department and will help to simplify and streamline processing of applications.

The board is amending (3) to set forth the minimum score to pass the state-specific land surveying exam. The board determined that 70 percent is an appropriate passing score for this new exam the board recently approved, and notes that the passing score is already stated on the exam materials.

24.183.802 CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS ~~(1) Land surveying experience shall include the following:~~

~~(a) preprofessional experience of four years of total progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:~~

~~(i) approved preprofessional experience;~~

~~(ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;~~

~~(iii) experience not obtained in violation of the licensure act;~~

~~(iv) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and reestablishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits and other documents pertinent to such work; or~~

~~(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.~~

~~(2) Experience time cannot be counted during periods counted for education.~~

~~(3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(4) Subprofessional experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than two years of preprofessional experience. Credible subprofessional experience may include one or more of the following:~~

~~(a) approved subprofessional experience;~~

~~(b) survey experience done under the supervision of a licensed professional land surveyor, including such work as:~~

~~(i) construction layout of buildings and miscellaneous structures;~~

~~(ii) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;~~

~~(iii) construction staking for land modification; and~~

~~(iv) construction staking for highways, roads, utilities, etc.;~~

~~(c) other construction surveying experience supervised by a licensed professional land surveyor; or~~

~~(d) other surveying experience supervised by a licensed professional land surveyor.~~

(1) Land surveying experience for the purpose of application for licensure shall be classified as progressive and non-progressive.

(2) Non-progressive experience must be gained under a licensed land surveyor and may include:

(a) construction layout of buildings and miscellaneous structures;

(b) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;

(c) construction staking for land modification, highways, roads, utilities, etc.;

or

(d) other construction surveying experience.

(3) Non-progressive experience shall be credited at one-half the time value of progressive experience and shall be limited to a total of no more than two years.

(4) Progressive experience is experience gained under the supervision of a licensed professional land surveyor and may include one or more of the following:

(a) experience on land surveying projects, which indicate the experience is of increasing quality and requiring greater responsibility;

- (b) experience not obtained in violation of the licensure act;
- (c) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and reestablishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits, and other documents pertinent to such work; or
- (d) experience teaching surveying subjects at an advanced undergraduate or postgraduate level in an accredited college or university offering a land surveying curriculum supervised by a licensed land surveyor.
- (5) All experience must be completed at the time of application.
- (6) Land surveyor applicants may be asked by the board to provide a more detailed explanation of their experience in the field aspects of the profession.

AUTH: 37-67-202, MCA

IMP: ~~37-67-306~~, 37-67-308, 37-67-309, MCA

REASON: The board is amending this rule to clarify experience definitions and limitations and accurately reflect what the board determined must be provided on both professional land surveyor and land surveyor intern applications. The current rule is both poorly organized and contains experience levels copied from those of professional engineers. As such, the current rule does not address the types or levels of experience gained by applicants in the land surveying profession. The amended rule will make land surveying experience more understandable to applicants, department staff, and board members alike. Implementation citations are amended to accurately reflect all statutes implemented through the rule.

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) ~~The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the board of professional engineers and land surveyors. The approved version of the form for public land survey system was adopted by the board on July 1, 1981, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, P.O. Box 359, Columbia Falls, Montana 59912, by contacting the association directly at (406) 892-4579, or on the internet at www.marls.com. The board-approved form for public land survey system corners and the board-approved form for non-public land survey system corners for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) are available on the board web site.~~

~~(2) The information to be included in a corner record is as follows:~~

~~(a) A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.~~

~~(i) The original record for corners of government surveys will usually be the general land office field notes.~~

~~(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey or other surveys of record.~~

~~(iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position because they clearly show on what history the surveyor based the corner position. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.~~

~~(b) A description of the original or subsequent record evidence found that locates the corner position.~~

~~(i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record must be noted, and if possible, an opinion as to its cause narrated.~~

~~(ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parol evidence, terrain calls, centerline of road, etc.) shall be indicated.~~

~~(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.~~

~~(c) A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.~~

~~(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.~~

~~(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are shown, then the control upon which they are based should be indicated.~~

~~(d) A sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.~~

~~(e) The surveyor who performed or directed the field work which is depicted on the corner record shall sign and affix the licensee's seal in the certification.~~

~~(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.~~

~~(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.~~

~~(f) For public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.~~

~~(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The corner location diagram must have the pertinent section number filled in and a closed circle indicating the appropriate corner position in the section. This is intended to be an aid in searching the record once it has been filed.~~

AUTH: 37-67-202, 70-22-107, MCA
IMP: 70-22-107, MCA

REASON: The board is amending (1) to inform the land surveying community that the forms on corner records are available on the board's web site.

Because (1) references the Corner Recordation Act of Montana, which contains all the standards for the record form, the board is deleting (2) as it unnecessarily repeats these same standards.

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

(1) remains the same.

(a) The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

(b) remains the same.

(c) Before a subdivision plat or certificate of survey may be filed for record, the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.

(d) The surveyor shall set all monuments prior to the filing of a plat or certificate of survey, except those monuments that will be disturbed by the installation of improvements, or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.

(i) through (e) remain the same.

(i) ~~At~~ at each corner and angle point of all lots, blocks, and parcels of land created by the survey;

(ii) ~~At~~ at every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey;

(iii) ~~At~~ at every point of curve, point of tangency, point of reversed curve, point of compounded curve, and point of intersection on each road right-of-way line created by the survey; and

(iv) ~~At~~ at the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.

(f) remains the same.

(g) If the land surveyor sets a monument that is on, is a part of, and controls a property line, then the surveyor shall file a certificate of survey which complies with the requirements of ARM 24.183.1104. Alternatively, the surveyor may file a corner record in lieu of a certificate of survey pursuant to 70-22-105(2), MCA.

(2) Remonumentation of public land survey corner monuments shall conform to (NEW RULE I).

AUTH: 76-3-403, MCA

IMP: 76-3-403, MCA

REASON: The board is adding (1)(g) to prevent improper setting/resetting of monuments and provide guidance on proper procedures for monumentation and remonumentation. This amendment will create a new requirement to file a certificate of survey when a monument is set in relation to a property line. The board believes this new requirement will eliminate long-standing confusion over whether certificates of survey are required in these instances.

It is reasonably necessary to add (2) to ensure that land surveyors are aware of the proposed new rule on remonumentation and rehabilitation of public land survey corners and monuments, and the need to comply with its provisions.

The board is amending grammar and punctuation throughout this rule to comply with formatting requirements of the Secretary of State.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) through (2)(e)(xiv) remain the same.

(xv) except as provided in (2)~~(d)~~(e)(xiii) and (xiv), the location, bearings, distances, curve data, and areas of all parks, common areas, and other grounds dedicated for public use;

(xvi) through (5) remain the same.

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-105, 76-3-201, 76-3-203, 76-3-205, 76-3-206, 76-3-207, 76-3-209, 76-3-301 through 76-3-307, 76-3-401 through 76-3-406, 76-3-411, MCA

REASON: This amendment is necessary to correct a typographical error from MAR 24-183-39A that was not discovered until after final publication of the amended rule. Since there are no subordinate sections of (2)(d) in this rule, the correct reference is to (2)(e).

The board is amending the implementation citations to accurately reflect all statutes implemented through the rule and account for repealed statutes.

5. The proposed new rules provide as follows:

NEW RULE I REMONUMENTATION AND REHABILITATION OF PUBLIC LAND SURVEY CORNERS AND MONUMENTS (1) The legal importance of the public land survey corner makes mandatory the construction of lasting monuments and accessories such that the greatest practicable permanence is secured. If it were necessary to alter the condition of a public land survey corner, then preserving the evidence of its original location is paramount. The public land survey corner monument should be carefully reconstructed (rehabilitated) or remonumented by such means as may be appropriate, without destroying the evidence which served to identify its original position.

(a) If a public land survey corner monument were to be rehabilitated only, then the monument shall primarily be restored as closely to its original state as practicable.

(b) If a public land survey corner monument were to be replaced with a more durable monument (remonumentation), then the following steps shall be performed:

(i) recovery and verification of the public land survey corner monument and/or its accessories;

(ii) removal of the public land survey corner monument and replacement with a monument conforming to ARM 24.183.1101;

(iii) placement and memorialization of the replacement monument so that there is only one monumented position. Unless local conditions are prohibitive, the public land survey corner monument being replaced shall be buried upside down alongside the replacement monument; and

(iv) remonument according to the procedures describing monumentation in the most current edition of the U.S. Bureau of Land Management Manual of Surveying Instructions.

(c) If a reference or accessory to a public land survey corner monument were lost, obliterated, destroyed, or in advanced stages of decay, then the following steps shall be performed:

(i) unless prohibitive, placement of a reference or accessory conforming to the most current edition of the U.S. Bureau of Land Management Manual of Surveying Instructions;

(ii) if practical, placement of references and accessories far enough from the corner monument to remain undisturbed if the corner monument itself were destroyed; and

(iii) marking of references and accessories clearly distinguishing them from the corner monument.

(d) If required by 70-22-104, MCA, a "PLSS Corner Record" form shall be completed pursuant to ARM 24.183.1001 and filed with the county clerk and

recorder for the public land survey corner monuments and accessories described in (1)(a), (b), and (c).

AUTH: 37-67-202, 70-22-107, MCA
IMP: 76-3-403, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule I to establish standards for the proper replacement or rehabilitation of land survey monuments. Following recommendations of a professional land surveyor board member, the board agreed that repairing or replacing land surveying monuments is an important task in land surveying, and may often be done poorly. The board also noted that having no clear published standards for remonumentation likely causes confusion and poor practices in the land surveying community.

NEW RULE II ENGINEERING SERVICES INCIDENTAL TO THE PRACTICE OF ARCHITECTURE (1) The performance of engineering services that are incidental to a licensee's work as an architect are those services which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property, and welfare of the public;

(b) are in an area where the licensee has demonstrated competence by adequate education, training, and experience;

(c) arise from, and are directly related to, work performed in the licensed profession;

(d) are substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) comply with all of the laws of Montana relating to the practice of engineering.

(2) Architects performing incidental practice as stated in (1) shall:

(a) perform only that part of the work for which the architect is professionally qualified;

(b) use professional engineers or other appropriately licensed professionals for those portions of the work in which the architect is not qualified;

(c) assume responsibility for compliance with all laws, codes, rules, and ordinances of the state or its political subdivisions pertaining to the documents; and

(d) not hold himself/herself out to be an engineer or as performing engineering services.

AUTH: 37-67-202, MCA
IMP: 37-67-103, MCA

REASON: The board is proposing this new rule following several years of discussion, development, and approval by a joint committee of the board and the Board of Architects and Landscape Architects. Pursuant to 37-67-103(4), MCA, licensed architects are able to practice engineering without obtaining a professional engineering license from the board only when the engineering work is purely incidental to their practice of architecture. The board intends for this new rule to

further clarify when licensed architects may do engineering work that is only incidental to the practice of architecture.

NEW RULE III EXHIBITS OF LAND SURVEYING PROJECTS (1) An applicant for licensure as a land surveyor shall submit no less than two and no more than four exhibits of land surveying projects demonstrating the diversity of the applicant's experience. A minimum of one exhibit shall demonstrate the applicant's knowledge of the principles and practices of boundary surveying.

(2) An applicant shall submit a written narrative describing each exhibit and the applicant's responsibilities and professional decision-making processes related to the land surveying project.

(3) An applicant applying for certification as a land surveyor intern under 37-67-310(1) and (2), MCA, is exempt from this requirement.

AUTH: 37-67-202, MCA

IMP: 37-67-308, MCA

REASON: The board is proposing this new rule to establish the number of exhibits required for professional land surveyor and land surveyor intern applicants for licensure to demonstrate experience in land surveying. Currently, there is no minimum number of exhibits required, nor is there a maximum, which leads applicants to submit fewer or more than the board finds useful. Those applicants for land surveyor intern who apply with only education and no experience are exempt under (3).

NEW RULE IV UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 67, MCA:

(a) conviction, including conviction following a plea of nolo contendere of an offense related to the ethical practice of engineering or land surveying, whether a misdemeanor or felony, and whether or not an appeal is pending;

(b) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license or license renewal; or in taking an examination required for licensure, as used herein, "material means any false or misleading statement or information";

(c) conduct in the performance of professional duties likely to deceive, defraud, or harm the public;

(d) making a false or misleading statement regarding the licensee's skill, experience, and scope of responsibility in connection with work for which they are claiming experience and performance of professional duties;

(e) failing to be objective and truthful in professional reports, statements, and testimony;

(f) publicly expressing a professional opinion on technical subjects when the opinion is not founded upon adequate knowledge of the facts and competence in the subject matter;

(g) issuing a statement, criticism, or argument on technical matters which are inspired by or paid for by interested parties, unless the licensee prefaces the comments by explicitly identifying the interested parties on whose behalf they are speaking and by revealing the existence of any interest the licensee may have in the matter;

(h) allowing the licensee's independent and professional judgment to be influenced in such a way that public safety, health, property, or welfare is endangered;

(i) approving and/or sealing design documents and surveys which do not conform with accepted engineering and land surveying standards, and which are thus unsafe for public health, property, and welfare;

(j) affixing a signature or seal to any plans or documents outside the competence of the licensee and not prepared under their responsible charge;

(k) failing to report professional misconduct and violation of the laws and rules of the board which are directly known to the licensee failing to report;

(l) failing to disclose known or potential conflicts of interest to a licensee's employers and clients by promptly informing them of any business association, interest, or other circumstances which could influence the licensee's judgment or quality of their services;

(m) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed upon by all interested parties;

(n) soliciting or accepting financial or other valuable consideration, directly or indirectly, from material or equipment suppliers or contractors in exchange for recommending the products of said suppliers or contractors, except with full disclosure;

(o) soliciting or accepting financial or other valuable consideration such as gratuities, gifts, travel, lodging, loans, entertainment, or other favors, directly or indirectly from contractors, their agents, or other parties in connection with work by the licensee or for the licensee's employers or clients for which the licensee is responsible;

(p) accepting a fee, contract, or commission for professional services on a "contingency basis," which may compromise the licensee's professional judgment;

(q) participating in decisions, with respect to professional services solicited or provided to a governmental body or organization, on which the licensee serves as a member, advisor, or employee;

(r) soliciting or accepting a professional contract from a governmental body on which a principal or officer of the licensee's employer serves as member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority;

(s) knowingly seeking or accepting employment for professional services for work on which another licensee or certificate holder is employed, or contracted to perform without the currently employed or contracted licensee or certificate holder being informed in writing; and

(t) knowingly attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees or indiscriminately criticizing other licensees' work.

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-331, 37-67-332, MCA

REASON: The board is proposing New Rule IV to combine its several rules on unprofessional conduct into a single, comprehensive rule. Additionally, the board has added provisions found in NCEES model rules, as well as provisions used by other Montana licensing boards to what is considered by the board to be unprofessional conduct for licensees and license applicants. The board believes that by having one unified and comprehensive rule on unprofessional conduct, its ability to evaluate complaints brought against licensees and applicants will be made more efficient and less confusing.

6. The rules proposed to be repealed are as follows:

24.183.2201 INTRODUCTION

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-67-301, 37-67-331, MCA

REASON: The board determined it is reasonably necessary to repeal ARM 24.183.2201, 24.183.2203, 24.183.2204, 24.183.2205, and 24.183.2206, as the board is incorporating their relevant provisions into proposed NEW RULE IV on unprofessional conduct.

24.183.2203 PERFORMANCE OF SERVICES ONLY IN AREAS OF COMPETENCE

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-301, MCA

24.183.2204 CONFLICTS OF INTEREST

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-301, MCA

24.183.2205 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-301, 37-67-331, MCA

24.183.2206 ISSUANCE OF PUBLIC STATEMENTS

AUTH: 37-67-202, MCA
IMP: 37-1-316, 37-67-301, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., July 25, 2014.

8. An electronic copy of this notice of public hearing is available at www.engineer.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpels@mt.gov; or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on December 16, 2013, by electronic mail.

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.301, 24.183.402, 24.183.501, 24.183.503, 24.183.509, 24.183.510, 24.183.701, 24.183.702, 24.183.801, 24.183.802, 24.183.1001, and 24.183.1107 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.101.413, 24.183.404, and 24.183.1101 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES II, III, and IV will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.183.2201, 24.183.2203, 24.183.2204, 24.183.2205, and 24.183.2206 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request from the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; fax (406) 841-2305; or e-mail dlibsdpels@mt.gov.

12. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, ENGINEER SURVEYOR,
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 16, 2014