

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

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
24.183.404 fee schedule, 24.183.511 license ) AND ADOPTION  
seal, 24.183.702 classification of experience )  
for engineering applicants, 24.183.2105 )  
continuing education, 24.183.2202 safety, )  
health, and welfare of the public and the )  
adoption of NEW RULES I-III pertaining to )  
classification of experience, branch offices, )  
and fee abatement )

TO: All Concerned Persons

1. On February 9, 2006, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 303 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 7, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received at the hearing. Two written comments were received by the March 15, 2006, deadline.

3. While department staff was working with the fee rule, it was noticed that the word "exam" was inadvertently left out of ARM 24.183.404(3)(d)(ii). The word will be inserted to make this subsection consistent with the language used in ARM 24.183.404(3)(d)(iii). The rule will be further amended to correct the board name in (1). Also, board counsel questioned the board's authority for ARM 24.183.404(3)(g)(iv), suggesting that the board may not have statutory authority to renew the certificate and charge a renewal fee. In light of the board's discussion of the issue, the board decided not to increase the certificate of authority renewal fee as proposed.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: A commenter stated he would like to see the fee structure in laws written with a maximum rather than an absolute number. This should be set above the current cost then the board could be allowed to make increases to cover cost without a change in the law.

RESPONSE 1: The board appreciates the comment. The dollar amount of the various fees is not established in statute; instead, the Legislature has delegated the fee setting process to each respective licensing board, pursuant to 37-1-134, MCA. The board agrees that while it would be convenient to list a fee as "an amount not to exceed 'x' dollars", and let the exact amount float as needed, the board does not have that option under Montana law. The board believes that it is required to establish the specific amount of its various fees via the administrative rulemaking process. The board notes that using the rulemaking process allows both the Legislature and the public to have advance notice and an opportunity to comment on proposed changes to the fees charged by the board.

COMMENT 2: A commenter submitted a written comment that referred to typographical errors and suggested the following corrections:

Under ARM 24.183.702(1)(a) "Subprofessional experience gained before graduation. This 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 one year of preprofessional experience. Credible subprofessional experience may include one or more of the following:"

In NEW RULE I(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:"

RESPONSE 2: The board agrees that the omitted language should be included in the rules and has amended the rules as suggested.

5. The board has amended ARM 24.183.511, 24.183.2105, and 24.183.2202 exactly as proposed.

6. The board has adopted NEW RULE II (24.183.406) and NEW RULE III (24.183.405) exactly as proposed.

7. The board has amended ARM 24.183.404 and 24.183.702 with the following changes, stricken matter interlined, new matter underlined:

24.183.404 FEE SCHEDULE (1) Fees shall be transmitted to the Board of Professional Engineers and Professional Land Surveyors. Fees for examinations administered by third party vendors must be paid directly to the vendor approved by the board. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) through (3)(d)(i) remain as proposed.

(ii) Reexamination only for Montana law specific exam

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(iii) through (g)(iii) remain as proposed.

(iv) Certificate of authority  
(h) through (h)(iv) remain as proposed.

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

IMP: 37-1-134, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) remains as proposed.

(a) Subprofessional experience gained before graduation. This 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 one year of preprofessional experience. Credible subprofessional experience may include one or more of the following:

(i) through (4) remain as proposed.

AUTH: 37-67-202, MCA

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

8. The board has adopted NEW RULE I (24.183.802) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.183.802) CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) through (3) remain as proposed.

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

(a) through (d) remain as proposed.

AUTH: 37-67-202, MCA

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

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DENIS APPLEBURY, PRESIDING OFFICER

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006