

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 proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.101.413 renewal dates, ) ON PROPOSED AMENDMENT  
24.183.404 fees, 24.183.502 applications, ) AND ADOPTION  
24.183.504 application disposal, 24.183.509 )  
examination procedures, 24.183.510 grant )  
and issue licenses, 24.183.2102 inactive )  
status, and adoption of NEW RULE I )  
teaching engineering subjects, and NEW )  
RULE II certificate of authorization )

TO: All Concerned Persons

1. On June 29, 2007, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption 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 June 22, 2007, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

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)(aa) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ab)	Professional Engineers and Professional Land Surveyors	Certificate of Authority <u>Authorization</u>	<del>Biennially, Even Numbered Years</del> <u>Annually</u>	<del>June 30</del> <u>October 1</u>
		Emeritus Status		

	Engineer Intern	Indefinite	
	Land Surveyor Intern	None, Indefinite	
	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

(ac) through (7) remain the same.

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

**REASON:** The department determined it is reasonable and necessary to amend this rule to align the renewal frequency for certificates of authorization with that set forth in board rules. The board is changing the renewal frequency from biennial to annual elsewhere in this notice. This rule is also being amended to correct terminology as used in 37-67-320, MCA, and to change the renewal date to October 1 to stagger renewals among different types of board licenses.

In addition, the board and the department are proposing to modify rules pertaining to renewal within one notice to reduce costs associated with rulemaking and to ensure the rule changes are more efficient and timely. Consolidating the board and department rule changes into one notice will avoid a conflict between department and board rules on renewal frequency.

4. **GENERAL STATEMENT OF REASONABLE NECESSITY:** The board has determined it is reasonably necessary to amend throughout the authority and implementation cites to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes.

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

24.183.404 FEE SCHEDULE (1) remains the same.

(2) In every case, should the board deny the issuance of a certificate and/or license to any applicant, the initial fee deposited shall be retained by the board as an application fee.

(3) remains the same.

(a) Engineer interns (EI) initial application \$ 25

(b) Land surveyor interns ( <u>LSI</u> ) initial application	25
(c) Professional engineers ( <u>PE</u> )	
(i) and (ii) remain the same.	
(d) Professional land surveyors ( <u>PLS</u> )	
(i) and (ii) remain the same.	
<u>(iii) Reschedule fee for Montana law specific exam</u>	<u>25</u>
(iii) remains the same but is renumbered (iv).	
(e) Certificate of authority <u>authorization</u>	
(i) remains the same.	
<u>(ii) Annual renewal fee of certificate of authorization</u>	<u>25</u>
<u>(iii) Certificate of authorization late renewal</u>	<u>25</u>
(f) through (f)(iii) remain the same.	
<del>(iv) Certificate of authority</del>	<del>50</del>
(g) through (g)(iii) remain the same.	
<del>(iv) Reschedule fee for Montana law examinations</del>	<del>25</del>
<del>(v) Certificate of authority issued in conjunction with late renewal</del>	<del>12.50</del>
<u>(iv) Reexamination fee for PE, PLS, LSI, EI</u>	<u>25</u>
<u>(v) Exam reschedule fee for PE, PLS, LSI, EI</u>	<u>25</u>
(4) remains 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: The board determined it is reasonably necessary to amend and reorganize this rule for better clarity and ease of use. The board is also amending this rule to implement fees for reexaminations and exam rescheduling and for consistent use of the term certificate of authorization. The board is statutorily obligated to set fees commensurate with board costs and these new fees will adequately support the administrative work in rescheduling exams and processing reexaminations. The board estimates that the new fees will affect 475 applicants and will increase annual revenue by approximately \$11,875.

The board is proposing to adopt New Rule II to provide specific requirements for entities renewing or making changes under certificates of authorization. It is reasonable and necessary to amend this rule to change from biennial to annual renewal of certificates of authorization to comply with and further implement the new rule. This amendment results in no change to board revenue. The board is also increasing to \$25 the fee for late renewal of certificates of authorization to comply with the department rule at ARM 24.101.403(2) that provides a late penalty fee must be 100 percent of the renewal fee. The board estimates approximately 200 late renewal fees and a resulting annual revenue increase of \$2,500.

24.183.502 APPLICATIONS (1) remains the same.

(2) The board, after due consideration of an application and of information pertaining thereto:

(a) will find the applicant eligible to sit for the appropriate exam; or

(b) request the applicant to furnish such additional information as may be necessary; or

(c) advise the applicant of the application's rejection in accordance with provisions of the law.

(3) A rejected applicant may request reconsideration under the section originally applied for, within one year of the date of notification, without additional fees. Additional evidence pertaining to the application must be furnished. However, reconsideration does not take into account experience or education subsequent to the date of application.

(4) An applicant who applies under a different section than that previously submitted shall submit a new complete application accompanied by the appropriate fee.

(5) Applications received after a board set application deadline will be processed for the following examination.

(6) If an application is withdrawn, no refund of the application fee will be made.

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

IMP: 37-67-303, MCA

REASON: The board has determined it is reasonably necessary to amend this rule to include language previously set forth in ARM 24.183.504 as a more appropriate location. The board is also amending the rule to address confusion among applicants by specifically delineating the board process for late-received applications and clarifying that fees for withdrawn applications are nonrefundable.

24.183.504 DISPOSAL OF APPLICATIONS (1) An application will be on file one year from the date of receipt. If no action is taken by the applicant within one year, the application fee will be forfeited and reapplication will be required. The board, after due consideration of an application and of information pertaining thereto:

(a) will find the applicant eligible to sit for the appropriate exam; or

(b) request the applicant to furnish such additional information as may be necessary; or

(c) advise the applicant of the application's rejection in accordance with provisions of the law.

(2) A rejected applicant may request reconsideration under the section originally applied for, within one year of the date of notification, without additional fees. Additional evidence pertaining to the application must be furnished. However, reconsideration does not take into account experience or education subsequent to the date of application.

(3) An applicant who applies under a different section than that previously submitted shall submit a new complete application accompanied by the appropriate fee.

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

IMP: 37-67-303, MCA

REASON: It is reasonable and necessary to delete the text of this rule and relocate it to ARM 24.183.502 as a more appropriate location. The board is also amending this rule to clearly delineate for applicants the board's process of retaining applications for one year before disposing of the outdated applications.

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 the board staff or it's a board designee, ~~if the board is not advised 30 days in advance of the examination date of the extenuating circumstance which requires rescheduling. If the board does not approve the rescheduling, the applicant will have to pay a rescheduling fee. 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.~~

(3) remains the same.

(4) A candidate failing to pass any examination may take that examination again ~~a second time at a subsequent examination period~~ upon payment of the reexamination fee specified by ARM 24.183.404. ~~However, if more than three examination dates have passed since the candidate's original failure, the candidate must submit a new application and pay the appropriate application and test fee specified by ARM 24.183.404 before the candidate will be reexamined.~~

(5) The examinee who has failed the Montana law state specific examination may review the examination paper 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. ~~No notes are to be made nor any marks made on the examination paper.~~

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

AUTH: 37-1-131, 37-1-134, 37-67-202, MCA

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

REASON: The board determined it is reasonably necessary to amend this rule to adjust exam processes following the board's contracting with a third-party exam vendor. The board concluded it is unnecessary to require an applicant to reapply if more than three exam cycles have passed since the original failure. In most cases, there would be very few changes from the original application. The board is amending the rule to address applicants' review of the Montana law state specific examination because the other exams are national exams monitored by the National Council of Examiners for Engineering and Surveying and the board only receives exam scores and diagnostic reports. The board determined it is necessary to allow note taking when reviewing the Montana law state specific examination as there are several exam questions that involve a calculator. Retaining the Montana law state specific examinations for one year is consistent with board retention rules and will allow for storage of other pertinent documentation.

24.183.510 GRANT AND ISSUE LICENSES (1) At the time an applicant is ~~voted~~ has met 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) A license authorizing the practice of professional engineering or professional land surveying by a sole proprietorship, firm, partnership, or corporation will be granted by the board and issued by the department after approval of an application for certificate of authorization and payment of the license fee. ~~The license~~ A wall 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.

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

IMP: 37-67-305, 37-67-306, 37-67-308, 37-67-309, 37-67-320, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify that the board does not vote approval of routine applications for licensure. A license is issued once the applicant has met all minimum requirements. The board is also amending this rule to correct terminology and the actual process for an entity holding a certificate of authorization to obtain a wall certificate.

24.183.2102 INACTIVE STATUS AND REACTIVATION CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee ~~annually~~ biennially to maintain license status.

(2) A licensee may not practice any professional engineering or professional land surveying work in the state of Montana while the license is ~~in an~~ on inactive status.

(3) Upon application and payment of the appropriate fee, the board may ~~reactivate~~ convert an inactive status license to active status if the applicant completes each of the following:

(a) and (b) remain the same.

(4) In the event an inactive licensee does not maintain a current license in any jurisdiction for the three previous years prior to requesting ~~reinstatement~~ conversion to active status, the board may require the applicant to take and pass the principles and practice of engineering (PE) examination or the principles and practice of land surveying (PLS) examination.

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

IMP: 37-1-319, ~~37-67-315~~, MCA

REASON: It is reasonable and necessary to amend this rule to correct terminology used for changing inactive licenses to active status. The board is amending terms in the rule to avoid conflict or confusion with the terms "reactivate" as used in 37-1-131, MCA, regarding license renewals, and "reinstatement" as used in situations following license discipline. The board is changing the period for inactive license renewal from annual to biennial to coincide with the renewal of active licenses.

6. The proposed new rules provide as follows:

NEW RULE I TEACHING OF ADVANCED ENGINEERING SUBJECTS

(1) The term "teaching of advanced engineering subjects" means engineering class instruction of courses at the junior class level and above within a board approved curriculum.

(2) Either the class instructor or the person in responsible charge of the board approved curriculum shall be a Montana licensed professional engineer and be in responsible charge of class instruction of engineering classes at the junior level and above.

AUTH: 37-1-131, 37-67-201, MCA

IMP: 37-67-101, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule I to address the teaching of advanced engineering subjects as part of the practice of engineering at 37-67-101, MCA. Following lengthy board discussion and input from several Montana engineering programs, the board is proposing this rule to specifically delineate at what level the teaching of advanced engineering requires licensure. Further, the board is clarifying in this rule that the person in responsible charge of the advanced engineering class instruction must be a Montana licensed professional engineer.

NEW RULE II CERTIFICATE OF AUTHORIZATION (1) Certificates of authorization shall be renewed annually on or before the date set by ARM 24.101.413. The annual renewal form must indicate the name and license number of the professional engineer and/or professional land surveyor in responsible charge and affirm that they are in good standing with the Montana Secretary of State's office and be accompanied by the renewal fee as specified by ARM 24.183.404.

(2) A professional engineer or professional land surveyor in responsible charge who leaves the employment of a sole proprietorship, firm, partnership, or corporation (who has obtained the required certificate of authorization from the board), for whatever reason, must provide written notification to the board office of that fact, within ten working days. The sole proprietorship, firm, partnership, or corporation must provide the board office within ten working days, on a prescribed form, the change of the professional engineer and/or professional land surveyor in responsible charge. Failure to name another professional engineer and/or professional land surveyor in responsible charge within ten working days shall be cause for suspension of the certificate of authorization and cause for revocation.

AUTH: 37-67-201, MCA  
IMP: 37-67-320, MCA

REASON: The 1995 Montana Legislature enacted Chapter 108, Laws of 1995 (House Bill 148), an act revising certain provisions of professional engineer and land surveyor licensure. The bill became effective on October 1, 1995.

The board finds it reasonable and necessary to adopt New Rule II to specifically delineate the requirements for certificates of authorization for entities providing engineering and/or land surveying services in the state of Montana. This will allow the board to more closely monitor any changes of the required professional engineer and/or professional land surveyor in responsible charge in accordance with 37-67-320, MCA, and to ensure the firms are in good standing with the Montana Secretary of State's office. This new rule is being adopted to address provisions that were deleted from statute through HB 148 and further implement the statute.

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) 841-2309, or by e-mail to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), and must be received no later than 5:00 p.m., July 9, 2007.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.engineer.mt.gov](http://www.engineer.mt.gov). 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 which includes the name 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. Such written request may be mailed 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) 841-2309, e-mailed to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on May 23, 2007, by regular mail.

11. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
TOM HEINECKE, PE, PRESIDING OFFICER

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

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

DEPARTMENT OF LABOR AND INDUSTRY

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

Certified to the Secretary of State May 29, 2007