Montana Department of
LABOR & INDUSTRY

Licensing Reform Task Force

CONSTRUCTION CONTRACTOR EXEMPTION ANALYSIS

Issue and Recommendation

Section 37-45-104, MCA excludes 24 categories from the construction contractor licensing chapter. The chapter's stated purpose is protection of the public health, safety, and welfare through regulation of construction contractors.[1] Its coverage is correspondingly broad: a construction contractor includes a person or entity pursuing an independent business that offers, undertakes, or bids construction-related work for another, subject to the exemptions in 37-45-104, MCA.[2]

Principal Recommendation

Repeal subsection (24), which excludes any independent contractor with no employees. It is a categorical exclusion based only on workforce size, not on the nature, value, risk, or public-facing character of the contractor's work. It also excludes precisely the solo operators whose work is most likely to be performed directly for consumers and who can be difficult to identify, monitor, and discipline.

The other exemptions should generally be retained, with targeted review of subsections (3), (4), (8), (10), (11), and (23). The lowest-priority technical repeal is subsection (10), which duplicates much of subsection (1) as to irrigation and reclamation districts.

Governing Context

Effective January 1, 2026, HB 239 converted the construction-contractor program from a registration program to a Title 37 licensing program. The Act requires a current department license to engage in the business of a construction contractor and requires, among other information, proof of workers' compensation compliance.[3]

A hiring party that contracts with a licensed construction contractor obtains the specified statutory protection against employer liability for workers' compensation, unemployment insurance, and wages/fringe benefits for the licensed contractor, its employees, and qualifying downstream subcontractors.[4] Licensing also permits the Department to apply the construction-contractor unprofessional conduct process to misclassification and other labor-law noncompliance.[5]

An independent contractor exemption certificate is a different statutory mechanism. It concerns workers' compensation status and coverage. A certificate holder must attest to freedom from control and an independently established business; when working within the certified occupation, the holder is conclusively presumed independent for Workers' Compensation Act purposes and waives Act benefits unless individually covered.[6] The

[1] 37-45-101, MCA.
[2] 37-45-102, MCA.
[3] 37-45-201, MCA.
[4] 37-45-202, MCA.
[5] 37-45-301, MCA.
[6] 39-71-417, MCA.

certificate can be suspended or revoked, and the independent-contractor statutes separately prohibit misrepresentation and coercive classification.[7]

Why subsection (24) should be repealed

It conflicts with the current licensing structure

Subsection (24) provides that the chapter does not apply to "an independent contractor who has no employees," while allowing voluntary registration. That means a solo contractor may perform the same construction work, for the same consumer, as a licensed contractor but remain outside the licensing requirement solely because the contractor has no employees. The exclusion is difficult to reconcile with 37-45-201's general rule that an individual or business entity may not engage in business as a construction contractor without a current license.

It creates an enforcement gap for labor-law compliance and misclassification

HB 239 made it unprofessional conduct for a licensee t hire or classify a person as an independent contractor without a required independent-contractor exemption certificate, to use a suspended, revoked, or improperly scoped certificate, or to violate workers' compensation, UI, or wage-and-hour laws.[8] Because subsection (24) keeps the solo operator outside the license program, the Department cannot use the Chapter 45 license discipline framework against that operator as a licensee.

That matters because the Legislature recently strengthened contractor-focused independent-contractor safeguards, including higher escalating penalties for independent-contractor violations and mandatory cessation orders in specified uninsured-employer circumstances.[9] A blanket licensing exclusion moves in the opposite direction: it limits the Department's ability to identify and regulate a significant class of construction businesses.

An ICEC does not replace construction-contractor licensing

A valid independent-contractor exemption certificate is relevant to workers' compensation coverage and status; it is not a construction-contractor license. The certification statue focuses on the certificate holder's freedom from control, independently established business, and the occupation stated on the certificate.[10] It does not supply the Chapter 45 public-facing licensing function, does not make the holder subject to the Chapter 45 unprofessional-conduct process as a licensee, and does not supply the contractor-license predicate for the hiring-party protections in 37-45-202.

It does not preserve the correct distinction between employment status and licensing status

Repeal should not be framed as a presumption that every unlicensed solo operator is an employee. Montana law expressly provides that a person may not be determined to be an employee for UI purposes solely because the person lacks an independent-contractor exemption certificate.[11] The recommended repeal is narrower: a person who independently operates a construction business should be subject to the same contractor-license requirement as other construction contractors, while employment status remains governed by Tile 39's applicable tests and certificate provisions.

Repeal advances fair competition and consumer protection

A sole proprietor may compete directly with licensed contractors for the same work. Requiring the same basic licensure promotes a level market, improves the public contractor list, and gives consumers and hiring parties a clearer way to verify contractor status. these are direct applications of Chapter 45's health, safety, welfare, and regulatory purpose.

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[7] 39-71-418 to -419, MCA.
[8] 37-45-301, MCA.
[9] HB 490, ch. 505 (2023).
[10] 39-71-417, MCA.
[11] SB 367, ch. 345 (2021).

Recommended position on subsection (24)

Recommend striking subsection (24) in full. No replacement exception is recommended merely because a contractor has no employees. A solo operator who does not otherwise meet the statutory definition of "construction contractor" remains outside the chapter by definition; a solo operator who does meet the definition should be licensed.

Analysis of the remaining exemptions

The recommendations below address whether to retain, narrow, or repeal the existing exemption. "Retain" does not mean that the conduct is unregulated; many retained exemptions are governed by another public body, licensing regime, or body of law.

(1). Authorized representatives of the United States, State, municipalities, counties, local governments, irrigation/reclamation districts, and other political subdivisions.
Recommendation: **Retain**
Analysis: Governmental construction activity is subject to public procurement, governmental oversight, and other accountability structures. The exemption appropriately avoids treating governmental entities and their authorized representatives as private construction businesses.

(2). Officers of a court acting within scope of office.
Recommendation: **Retain**
Analysis: This is a narrow separation-of-powers and court-administration exemption. It is unlikely to create a material market or consumer-protection gap.

(3). PSC-regulated public utilities and Title 35, ch. 18 rural cooperative utilities performing work incidental to their own business.
Recommendation: **Retain, but consider narrowing**
Analysis: The exemption is defensible because the entities are separately regulated and the work must be incidental to the utility's own business. Consider confirming that the language does not shelter general contracting work offered to third parties or work unrelated to the entity's utility function.

(4). Oil/gas, mine, mineral-deposit, and related occupations.
Recommendation: **Retain, but confirm scope**
Analysis: The exemption recognizes specialized extraction operations subject to separate state and federal regulatory frameworks. Its breadth warrants confirmation that it is confined to work genuinely incidental to discovery, production, drilling, testing, abandonment, or mining—not stand-alone construction contracting for others.

(5). Sale or installation of finished products/materials not fabricated into or permanently fixed to a structure
Recommendation: **Retain**
Analysis: This appropriately excludes retail or movable goods transactions that do not create a permanent structural improvement. The permanent fixed-part limitation provides a usable boundary.

(6). Work within a site or reservation under exclusive federal jurisdiction
Recommendation: **Retain**
Analysis: State licensing authority may be limited within areas of exclusive federal jurisdiction. The exemption is a prudent jurisdictional carveout.

(7). Material, supply, or equipment providers that do not fabricate or consume the items in contractor work
Recommendation: **Retain**
Analysis: Mere suppliers are not performing the construction work Chapter 45 targets. The limitation guards against exempting a supplier that actually performs or materially participates in installation/construction.

(8). Casual/minor/inconsequential project under $2,500, with anti-evasion safeguard

Recommendation: **Retain, with threshold review**
Analysis: A de minimis exemption reduces regulatory burden for small projects while the anti-splitting language prevents evasion. The $2,500 threshold should be reviewed for present-day adequacy, but any change should be policy- and fiscal-informed rather than automatic.

(9). Farmer/rancher engaged in listed agricultural operations
Recommendation: **Retain**
Analysis: The exemption is a traditional sector-specific carveout for work integral to agricultural operations. It should not be read to exempt a separate construction business serving others.

(10). Irrigation district or reclamation district
Recommendation: **Consider repeal as duplicative**
Analysis: Subsection (1) already covers irrigation districts, reclamation districts, and other municipal or political subdivisions. Subsection (10) appears duplicative unless it is intended to reach a nonpublic district not encompassed by subsection (1). Confirm the intended universe before repeal.

(11). Rural land clearing or other work for fire prevention
Recommendation: **Retain, but clarify if needed**
Analysis: This supports wildfire-mitigation activity. If retained, consider whether “rural districts” and “for fire prevention purposes” have a sufficiently ascertainable operational meaning.

(12). Owner contracting for work by a registered construction contractor, subject to anti-speculation limitation
Recommendation: **Retain; update terminology**
Analysis: The provision appropriately avoids treating an owner as a contractor merely for hiring a licensed contractor. Replace “registered” with “licensed” if any legacy wording remains, so the exemption matches the post-HB 239 program.

(13). Owner working on owner’s own property, subject to anti-speculation/primary-residence limitation
Recommendation: **Retain**
Analysis: This is a conventional owner-builder exemption. The anti-speculation limitation appropriately protects against commercial developers using the owner label to evade licensing.

(14). Commercial-property owners using their own employees for maintenance, repair, and alteration of their properties
Recommendation: **Retain**
Analysis: The owner is using employees for its own property rather than operating a contractor business for others. Those employees remain subject to general employment and safety laws.

(15). Montana-licensed architects, engineers, and land surveyors acting solely professionally
Recommendation: **Retain**
Analysis: These professions are separately licensed. The “solely in a professional capacity” qualifier is essential and should remain, so the exemption does not reach a design professional who separately undertakes construction contracting.

(16). Montana-licensed electricians and plumbers working within license scope
Recommendation: **Retain**
Analysis: Separate occupational licensing regulates these trades. The within-scope limitation prevents a broader contractor exemption.

(17). Licensed contract security companies acting within license scope
Recommendation: **Retain**
Analysis: This is a discrete, separately licensed activity. Retention is appropriate if limited to security-company work within the Title 37, chapter 60 license scope.

(18). Persons acting solely as wage-compensated employees
Recommendation: **Retain**
Analysis: This is fundamental. Employees of a contractor are not independent construction businesses and should not individually obtain a contractor license.

(19). Persons licensed under Title 50, chapter 39 to sell, install, or service fire-suppression/protection equipment
Recommendation: **Retain**
Analysis: This preserves a specialized separate licensing framework. The exemption should remain limited to the regulated fire-protection work.

(20). Licensed water-well contractors performing water-well work
Recommendation: **Retain**
Analysis: Water-well contractors are separately licensed under Title 37, chapter 43. The activity-specific limit is appropriate.

(21). Enrolled tribal members and qualifying Indian-owned entities working solely within reservation boundaries
Recommendation: **Retain**
Analysis: This exemption implicates tribal sovereignty and jurisdictional considerations. It should not be revised without focused tribal consultation and legal review of the particular reservation, activity, and jurisdictional basis.

(22). Logging contractors building forest-access roads for harvesting/transporting logs
Recommendation: **Retain, subject to program confirmation**
Analysis: The narrow functional limitation supports retention as an integral forestry activity, not general road contracting. Program staff should confirm whether any recurring safety, consumer, or labor-compliance issue warrants revisiting it.

(23). Person working on the person's own residence when the residence is owned by another
Recommendation: **Retain, but clarify or consolidate**
Analysis: This appears directed to a resident, such as a tenant, doing work personally on the residence rather than operating a contractor business. It is narrow but potentially ambiguous. Retain only if the policy objective is still needed; otherwise, clarify that it covers self-performed work and not contracting or employing others.

Cross-cutting drafting and implementation points

1. **Replace legacy "registered" terminology.** Section 37-45-104(12) refers to a "registered construction contractor," but the operative requirement is now a current construction contractor license. Update the terminology for internal consistency.
2. **Keep distinct legal regimes distinct.** Chapter 45 licensure, an independent-contractor exemption certificate under § 39-71-417, workers' compensation coverage, UI employment status, and wage-and-hour status are related but not interchangeable. The bill explanation and stakeholder materials should state that repeal of subsection (24) imposes a contractor-license requirement; it does not itself decide employment status.
3. **Coordinate program communications.** If subsection (24) is repealed, affected solo contractors should receive clear notice of license requirements, application procedures, workers' compensation compliance alternatives, and the different function of an independent-contractor exemption certificate.

4. **Preserve the low-dollar anti-evasion protection.** If subsection (8) is retained or the threshold is revised, retain the present protection against dividing a larger project into sub-threshold contracts for the purpose of evading Chapter 45.

Bottom line

The exemptions in § 37-45-104 should not be repealed wholesale. Most reflect identifiable limits on state jurisdiction, separate professional regulation, a non-contractor relationship, or a narrow and administrable policy choice. The exception is subsection (24). Its blanket exemption for independent contractors with no employees does not align with Chapter 45's current licensing and accountability framework and should be **struck in full**.

A secondary cleanup option is to repeal subsection (10) if program and legal review confirms that subsection (1) already fully covers the same irrigation and reclamation districts. The remaining targeted review should focus on ensuring that the utility, extraction, fire-prevention, forestry, and resident-work exemptions remain limited to their stated specialized activities and are not used to shelter ordinary third-party construction contracting.