

Licensing Reform Task Force

Construction Subcommittee

LEGISLATIVE AND LEGAL HISTORY OF MONTANA CONTRACTOR REGISTRATION BOND REQUIREMENTS

Executive Summary

The original Montana construction contractor registration program enacted in 1995 required contractors to provide a bond or other security as a condition of registration. The bond was designed to protect workers, the State, and persons furnishing labor by guaranteeing payment of wages and fringe benefits, taxes and contributions due to the State, and payments owed for labor. The 1995 law also tied the duration and continued validity of a registration certificate to the bond, workers' compensation coverage, and unemployment insurance compliance.

The bond requirement was controversial from the outset. Legislative testimony reflected support for meaningful entry requirements, including bonding, but also repeated concerns that the bond requirement created administrative burdens for the Department, contractors, and surety underwriters; that the bond amount was too low to provide meaningful protection; and that the requirement complicated renewal and enforcement. After a legal challenge temporarily prevented enforcement of Senate Bill 354, the 1997 Legislature revisited the program. Senate Bill 45 proposed removing the bond requirement but died in the House. House Bill 252, which ultimately passed, revised the contractor registration laws without reintroducing the bond requirement.

The current statutory framework confirms that Montana has moved away from a contractor-registration bond model. Construction contractor regulation is now codified in Title 37, chapter 45, MCA, following 2025 legislation transferring construction contractor registration to a Department licensing program. The current law requires licensure and proof of workers' compensation compliance, authorizes fees and penalties, and treats failure to comply with workers' compensation, unemployment insurance, and wage laws as unprofessional conduct, but it does not impose a general bond requirement for construction contractor licensure.¹

Background and Question Presented

The Construction Subcommittee requested a memorandum summarizing the legislative and legal history of Montana's construction contractor registration bond requirements, with particular emphasis on the original 1995 enactment, the subsequent legal challenge, the 1997 legislative response, and the status of bond requirements under current law.²

¹ 37-45-201, MCA, 37-45-301, MCA, and HB 239, Ch. 644, Laws of 2025.

² This memorandum relies on a bond report provided by the DLI Licensing Bureau, identified legislative committee materials referenced in that report, and currently available statutory materials. The court filings and orders in the 1996 Intermountain Systems litigation should be reviewed directly if the Subcommittee needs a complete litigation record or a detailed constitutional analysis. This memorandum does not identify a published Montana Supreme Court merits decision resolving the constitutionality of Senate Bill 354; rather, it summarizes the litigation history as reflected in the Subcommittee materials.

Chronology of Key Events

| Date or Period | Event | Significance |
|---------------------------------|---|---|
| 1995 Legislative Session | Senate Bill 354 enacted the contractor registration program. | Created Montana's original construction contractor registration program and included a bond or other security requirement at registration. |
| February 18, 1995 | Senate Labor and Employment Relations Committee hearing on Senate Bill 354. | Testimony addressed the policy rationale for registration and bonding, as well as concerns about administrative burden, bond sufficiency, and enforcement consequences. |
| March 15, 1995 | House Business and Labor Committee hearing on Senate Bill 354. | Testimony continued to address both support for meaningful entry requirements and opposition to bonding-related requirements. |
| February 13, 1996 | Civil action filed challenging Senate Bill 354 on behalf of Intermountain Systems, Inc. | Litigation challenged the constitutionality of the 1995 contractor registration program. |
| 1996 | Temporary restraining order issued and later upheld by the Montana Supreme Court, according to the Subcommittee report. | The Department was prevented from enforcing Senate Bill 354 during the pendency of the litigation and legislative response. |
| January 9, 1997 | Senate Labor and Employment Relations Committee hearing on Senate Bill 45. | Senate Bill 45 was introduced to revise the 1995 contractor registration laws; testimony supported removing bond requirements. |
| 1997 Legislative Session | Senate Bill 45 passed the Senate but died in the House Business and Labor Committee. | The bill did not become law, but its hearing record is significant because it reflects Department and stakeholder concerns regarding the bond requirement. |
| March 13, 1997 | Senate Labor and Employment Relations Committee hearing on House Bill 252. | House Bill 252 began as a full repeal of the contractor registration program; proponents specifically supported repeal of the bond requirement. |
| May 7, 1997 | House Bill 252 is signed into law. | The 1997 Legislature revised the contractor registration program without reintroducing the bond requirement. |
| August 4, 1997 | Injunction in the Intermountain Systems litigation dissolved according to the Subcommittee report. | The dissolution followed the 1997 statutory revisions. |
| April 22, 1998 | Final judgment entered in favor of the State of Montana, according to the Subcommittee report. | The State ultimately prevailed in the civil action after the Legislature revised the underlying statutory framework. |
| January 1, 2026 | HB 239, Chapter 644, Laws of 2025, became effective. | Construction contractor regulation was transferred to a Department licensing program in Title 37, chapter 45, MCA. |

1995 Legislative Session: Senate Bill 354

Enactment of the Contractor Registration Program

Senate Bill 354, enacted during the 1995 Legislative Session, established Montana's original construction contractor registration program. The bill required contractors to provide a **bond or other security** at the time of registration. The program also tied a contractor's registration status to the continuing validity of the bond and to other employment-law compliance markers.

Registration certificates under the 1995 law expired after one year or upon the earlier expiration of the contractor's bond, workers' compensation coverage, or unemployment insurance coverage. A contractor's registration was automatically suspended if the bond was cancelled or if there was an unsatisfied judgment.

Purpose and Minimum Standards of the Bond

Section 27 of Senate Bill 354 established the purpose and minimum standards for the bond. The bond guaranteed:

- payment of wages and fringe benefits of all workers employed by the contractor;
- payment of all taxes and contributions due to the State; and
- payment to persons furnishing labor.

The bond requirement therefore functioned as a financial-responsibility mechanism tied to worker protection, state revenue protection, and labor-payment protection. It was not framed solely as a consumer-protection bond for construction customers.

Testimony Supporting Senate Bill 354

Proponents supported the concept of meaningful entry requirements for contractors, including bonding.³ The principal policy rationale for the bond requirement was that a contractor entering the market should provide some assurance that workers, the State, and persons furnishing labor would not be left without recourse if the contractor failed to meet basic legal obligations. In that respect, the 1995 bond requirement complemented the broader registration program's apparent purpose of promoting fair competition and compliance with labor, workers' compensation, and unemployment insurance requirements.

Testimony Opposing or Questioning Senate Bill 354

Opponents and concerned stakeholders raised several recurring issues regarding the bond requirement.⁴ The concerns included:

- confusion created by tying the registration renewal period to the bond requirement;
- administrative burden associated with registering companies and verifying minimum requirements, including bonds;
- concern that the bond could require extensive public effort to pursue remedial action against contractors;
- concern that minimum bond requirements would not adequately protect both customers and contractors; and
- concern that meaningful bond protection would require more intensive underwriting.

These objections are significant because they foreshadowed the arguments that led the 1997 Legislature to reconsider whether a general bond requirement was practical or effective.

³ Senate Labor and Employment Relations Committee minutes for February 18, 1995, pages 14 - 17; House Business and Labor Committee minutes for March 15, 1995, pages 3 - 5.

⁴ Senate Labor and Employment Relations Committee minutes for February 18, 1995, pages 17 - 21; House Business and Labor Committee minutes for March 15, 1995, page 5.

Post-1995 Legal Challenge

A civil lawsuit was filed on February 13, 1996, challenging the constitutionality of Senate Bill 354 on behalf of Intermountain Systems, Inc. A temporary restraining order was issued and later upheld by the Montana Supreme Court, preventing the Department of Labor from enforcing any part of Senate Bill 354.

The injunction was dissolved on August 4, 1997, following the 1997 Legislative Session. A final judgment was entered in favor of the State of Montana on April 22, 1998.

For purposes of this memorandum, the key legal significance is that the 1995 program did not proceed on a normal enforcement track. The litigation stayed enforcement while the Legislature reconsidered the statutory scheme. The final judgment in favor of the State indicates the litigation did not ultimately invalidate the State's authority to regulate contractor registration; however, the practical effect of the litigation was that the Legislature addressed the bond requirement before the original 1995 program became fully operational.

1997 Legislative Session: Senate Bill 45

Senate Bill 45 was introduced in the 1997 Legislative Session to update the contractor registration laws enacted in Senate Bill 354. The bill responded to industry and public feedback received after the 1995 enactment and during the period in which enforcement was restrained by litigation.

At the first hearing on Senate Bill 45, an amendment was proposed to remove the bonding requirements. Testimony stated that the bond amount was too low to be effective and that the bonding requirement created a substantial administrative burden for both the Department and contractors. The bill sponsor stated that the bonding requirement should be removed at the request of the Department and other stakeholders.⁵

Senate Bill 45 passed the Senate but died in the House Business and Labor Committee. Although it did not become law, the bill is important legislative history because it shows that the Department and stakeholders had concluded by early 1997 that the bond requirement was not an effective or administratively workable mechanism.

1997 Legislative Session: House Bill 252

House Bill 252 also revised the construction contractor registration laws. As introduced, it proposed a full repeal of the contractor registration program. During the Senate Labor and Employment Relations Committee hearing on March 13, 1997, proponents supported repeal of registration and specifically supported repeal of the bond requirement, which they stated had put contractors out of business.⁶ Opponents of House Bill 252 did not address the bond requirement.⁷

House Bill 252 passed with multiple amendments and was signed into law on May 7, 1997. No amendment reintroduced the bond requirement. The result was a revised contractor registration program that retained a regulatory framework but abandoned the general contractor bond requirement adopted in 1995.

⁵ Senate Labor and Employment Relations Committee minutes for January 9, 1997, pages 5 - 17.

⁶ Senate Labor and Employment Relations Committee minutes for March 13, 1997, pages 2 - 11.

⁷ *id.*, pages 11 - 17.

Current Statutory Framework

Transfer to Title 37 Licensing Program

In 2025, the Legislature enacted House Bill 239, Chapter 644, Laws of 2025, effective January 1, 2026. The Act revised laws related to construction contractors and transferred construction contractor registration to a Department licensing program. The Act's stated purpose is "to protect the public health, safety, and welfare of the public through the regulation of construction contractors."⁸

Under current law, an individual or business entity may not engage in business as a construction contractor without a current license from the Department. The license application must include, among other things, proof of compliance with workers' compensation laws, the applicant's social security number, any Internal Revenue Service employer identification number, and identifying information for business owners, partners, officers, managers, members, or registered agents, depending on the applicant's business form.⁹

No General Bond Requirement in Current Licensing Statute

The current construction contractor licensing statute does not impose a general bond requirement comparable to the 1995 bond requirement. Instead, the current framework relies on licensure, application disclosures, proof of workers' compensation compliance, fees, complaint and disciplinary authority, penalties, and unprofessional-conduct standards.

Current law also preserves the liability-limiting effect of engaging a licensed construction contractor. A person who contracts with a licensed construction contractor is not liable as an employer for workers' compensation coverage, unemployment insurance coverage, or wages and fringe benefits for the licensed contractor, the contractor's employees, or subsequent subcontractors and their employees.¹⁰

Enforcement Through Unprofessional Conduct and Penalties

The current enforcement model addresses many of the same compliance concerns that the 1995 bond requirement was intended to address, but through licensing discipline rather than surety coverage. Section 37-45-301, MCA, identifies unprofessional conduct for construction contractor licensees and license applicants. Relevant conduct includes fraud or concealment in license applications, advertising, contracts, or written client communications; misappropriation of client funds; interference with Department investigations; improper hiring or classification of independent contractors; and failure to comply with workers' compensation, unemployment insurance, and wage-payment laws.¹¹

HB 239 also subjects persons who commit unprofessional conduct to penalties of up to \$5,000 and suspension or debarment from public works contracts. Penalties collected under that section are deposited in the uninsured employers' fund.¹²

Exclusive State Regulatory Authority and Local Bonds

Current law provides that the provisions of Title 37, chapter 45 relating to registration or licensing, including any requirement of a bond with the State of Montana named as obligee and the collection of a fee, are exclusive for licensed construction contractors. A political subdivision may not require or issue registrations, licenses, or bonds for the same or a similar purpose. The statute does not limit local governments' authority to levy general, nondiscriminatory business license fees or to regulate contractors not required to be registered under the chapter.¹³

This exclusivity provision is historically notable because it originated in the 1995 enactment and still refers to bond requirements as a type of state-level requirement that would preempt local analogues. The current presence

⁸ HB 239, Ch. 644, § 1, Laws of 2025.

⁹ 37-45-201, MCA.

¹⁰ HB 239, Ch. 644, § 5, Laws of 2025.

¹¹ 37-45-301, MCA.

¹² HB 239, Ch. 644, § 8, Laws of 2025.

¹³ 37-45-204, MCA.

of this language should not be read to impose a general state bond requirement where the operative licensing statutes do not do so.

Analysis for the Construction Subcommittee

Legislative History Shows a Deliberate Move Away From General Bonding

The legislative history reflects a clear sequence. In 1995, the Legislature adopted a contractor registration model that included bonding as a condition of registration. By 1997, after litigation and stakeholder experience, the Legislature considered and then enacted revisions that did not preserve the bond requirement. Senate Bill 45's hearing record expressly identified Department and stakeholder support for eliminating bonding. House Bill 252 then passed without reintroducing bonding.

The most persuasive legislative-history point is not merely that the bond requirement disappeared. It is that testimony in both 1997 bills identified concrete reasons for removal: administrative burden, ineffective bond amounts, burdens on contractors, and practical underwriting concerns. This history would support the conclusion that the omission of a general bond requirement from the post-1997 framework was intentional rather than inadvertent.

Original Bond Purpose Is Now Addressed Through Other Compliance Mechanisms

The 1995 bond was intended to secure payment of wages and fringe benefits, taxes and contributions due to the State, and payments to persons furnishing labor. Current law addresses related concerns through proof of workers' compensation compliance, licensing authority, penalties, discipline for failure to comply with workers' compensation, unemployment insurance, and wage laws, and limits on improper independent-contractor classification.¹⁴

Those mechanisms are not identical to a bond. A bond may provide a source of recovery for certain claimants, while licensing discipline and penalties primarily deter and punish noncompliance. But the current statutory structure indicates that the Legislature has chosen a regulatory-compliance model rather than a financial-assurance model for general construction contractor licensing.

Reinstating a Bond Requirement Would Be a Policy Choice With Administrative Consequences

If the Subcommittee considers recommending a renewed bond requirement, the 1995 and 1997 history suggests several implementation issues that should be addressed expressly:

- the amount of the bond and whether it would provide meaningful protection;
- the class of claimants protected by the bond;
- priority among wage claimants, tax claims, labor providers, consumers, and other potential claimants;
- the Department's role in verifying, tracking, suspending, reinstating, and enforcing bonds;
- coordination with workers' compensation, unemployment insurance, wage-payment, and independent-contractor enforcement;
- whether surety underwriting would be available and affordable for small contractors; and
- whether the bond requirement would affect market entry, especially for small or newly formed contractors.

The history also suggests that a bond requirement should not be adopted without a clear administrative mechanism and a clear statement of the Department's enforcement role. The 1997 testimony repeatedly emphasized that a bond requirement can shift significant monitoring and enforcement costs to the Department if not carefully designed.

¹⁴ 37-45-201, MCA and 37-45-301, MCA.

Conclusion

Montana's construction contractor bond requirement originated in Senate Bill 354 in 1995 as part of the State's initial contractor registration program. The bond was intended to secure payment of wages and fringe benefits, taxes and contributions owed to the State, and payments to persons furnishing labor. The requirement immediately generated practical concerns regarding administrative burden, adequacy of protection, underwriting, renewal complications, and enforcement.

Following a constitutional challenge that temporarily prevented enforcement of the 1995 law, the 1997 Legislature revisited the registration program. Senate Bill 45 proposed eliminating bonding but did not become law; House Bill 252 ultimately revised the program without reintroducing the bond requirement. That legislative history supports the conclusion that the Legislature deliberately moved away from a general contractor-registration bond requirement.

Current Montana law regulates construction contractors through a Title 37 licensing framework administered by the Department. The framework requires licensure and proof of workers' compensation compliance and authorizes discipline and penalties for unprofessional conduct, including noncompliance with workers' compensation, unemployment insurance, and wage laws. It does not impose a general construction contractor bond requirement. Any recommendation to reinstate bonding would therefore be a new policy decision requiring careful attention to bond amount, protected claimants, Department administration, surety availability, and interaction with existing enforcement mechanisms.