

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE AND
ARM 44.5.121 pertaining to) EXTENSION OF COMMENT
miscellaneous fees charged by the) PERIOD ON PROPOSED
Business Services Division) AMENDMENT

TO: All Concerned Persons

1. On December 24, 2015, the Secretary of State published MAR Notice No. 44-2-214 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2241 of the 2015 Montana Administrative Register, Issue Number 24.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on February 18, 2016, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The Secretary of State is extending the comment period to give notice to the sponsor of Senate Bill 1 (2015) of this rule notice. The Secretary of State first attempted to amend this rule in June of 2014 in MAR Notice No. 44-2-196 to set by rule the fee charged for the filing of surety bonds, cashier's checks, or certificates of deposit. The Secretary of State is required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law."

The statutes imposing the filing duties for these documents are 20-7-604, MCA, and 82-1-104, MCA. Although these statutes did not state that the Secretary of State may charge a fee for these services, the Secretary of State believes that 2-15-405, MCA, contains rulemaking authority for all fees charged by the Secretary of State for all legislatively mandated filings in the office.

House Bill 639, as passed by the 2001 Montana Legislature, enacted 2-15-405, MCA. House Bill 639 amended 27 statutes that dealt with Secretary of State fees, eliminating any reference to rulemaking that appeared in those 27 statutes, and providing the following language: "The secretary of state shall set and deposit fees authorized in this section in accordance with [section 1] (codified as 2-15-405, MCA)."

It was the Montana Legislature's intent that 2-15-405, MCA, provides broad rulemaking authority for all Secretary of State fees and eliminates the need to mention rulemaking authority for fees in any statute that mentions Secretary of State

filing fees. However, the State Administration and Veterans' Affairs committee (SAVA) of the Montana Legislature decided to introduce legislation to the 2015 Montana Legislature inserting Secretary of State rulemaking authority into 20-7-604, MCA, and 82-1-104, MCA.

Now, almost one year later, the SAVA committee is again delaying the Secretary of State's attempt to comply with the requirement that all its fees be set by rule. Per 2-4-302, MCA, an agency is required to notify the primary sponsor of "a rule that initially implements legislation for a program." The two statutes amended by Senate Bill 1 have long been in existence and relate to textbook dealers and geophysical exploration, neither of which programs are under the authority of the Secretary of State. The amendments provided to the two statutes by Senate Bill 1 simply inserted rulemaking authority into two long existing statutes, which is not "a rule that initially implements legislation for a program."

Although, in the interest of time and efficiency, the Secretary of State agreed to re-notice the rule amendment and provide notice to the sponsor of Senate Bill 1, the Secretary of State wants to voice its strong disagreement with the statutory interpretations imposed by SAVA and the unnecessary rulemaking delays imposed upon the agency.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 3, 2016.

5. The bill sponsor was contacted by letter on January 20, 2016.

6. No member of the public commented on the rule notice.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 25th day of January, 2016.