



Economic Affairs Interim Committee
63rd Montana Legislature

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August 22, 2013

Pam Bucy
Commissioner, Department of Labor and Industry

by email and intraoffice mail

Dear Commissioner Bucy:

The Economic Affairs Interim Committee voted 6-2 at its Aug. 21 meeting to continue its objection, provided earlier to you in a letter dated July 18, 2013, regarding the proposed rule increasing fees on measuring devices, noticed in Issue No. 12 of the Montana Administrative Register, on June 20, 2013. The Committee directed that a letter be sent to notify the Department of Labor and Industry that, pursuant to the Montana Administrative Procedure Act, sections 2-4-305(9) and 2-4-306(4)(c), MCA, the Committee has objected to the increase in fees on measuring devices out of a concern that fees are not commensurate with costs, and that a reasonable necessity was not provided in that the explanation of reasonable necessity vaguely described that licensee fees increased in House Bill No. 591 "only pay for about half of the bureau's costs" but do not describe clearly whether the "funding shortages" referenced in the rule notice were specifically tied to the department's attempts to test all meters every year. The Committee questions whether meter testing needs to be done every year or whether there are other options for testing. The reasonable necessity also referred generally to a need to replace outdated equipment and fill vacant positions but did not mention that one reason for the increase was for gathering data, which was discussed at the Aug. 21 Committee meeting. Because the statement of reasonable necessity gave no specifics about the money actually needed to handle meter testing to avoid a deficit, or actual amounts needed to replace outdated equipment, the Committee questions whether the rationale for a 26% average increase in fees, "about the same as scale license fees", meets the requirement of clearly showing that the increase in fees is directly tied to an increase in costs.

The referenced MAPA statutes are:

2-4-305(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

2-4-306(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that: ...

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

The Committee does not object to the new rule also in the MAR notice 24-351-276 regarding split weighing.

As part of its vote to object to the increase in meter fees, the Committee encouraged the department to work with the industry stakeholders and consider other options to pursue regarding meter testing, including but not limited to a committee bill if the stakeholders and the department can agree on an approach.

Sincerely,


Sen. Bruce Tutvedt, presiding officer

cc: Tim Lloyd, bureau chief, Weights and Measures Bureau

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