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Economic Affairs Interim Committee
64th Montana Legislature

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September 8, 2015

Pam Bucy
Commissioner, Department of Labor and Industry

Dear Commissioner Bucy:

The Economic Affairs Interim Committee (Committee) voted 7-0 at its August 31, 2015, meeting to continue its objection, provided earlier to you in a letter dated June 12, 2015, regarding rules proposed by the Board of Physical Therapy Examiners (Board). Specifically, the rules included dry needling procedures in MAR Notice 24-177-32. The Committee directed that a letter be sent to notify the Department of Labor and Industry that pursuant to sections 2-4-305(9) and 2-4-306(4)(c), MCA, the Committee has objected to the rules out of a concern that the rules exceed the statutory authority of the Board by exceeding its scope of practice.

During the hearing, the Committee heard additional concerns regarding training requirements and public safety concerns. The rule notice did not specify a standard regimen for training or continuing educational requirements. The Committee asked that the Board reach out to the Board of Medical Examiners and the acupuncture community to develop rules that work for all parties.

Procedurally, the Committee maintained its objection under 2-4-305(9) and 2-4-306(4), MCA, in the Montana Administrative Procedure Act (MAPA). These statutes require the committee to send a letter to the department. Under MAPA, the Committee may withdraw its objection to the proposed rules at various stages. 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.

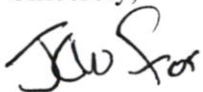
2-4-406(1), (2):

(1) If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

As you are aware, the Committee does not meet again until December 1-2, 2015. However, it will monitor whether the parties have reached a consensus regarding dry needling. At that point, it will reassess its objection.

Sincerely,



Rep. Ryan Lynch, presiding officer