



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: July 9, 2019

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 2-4-581

AGENCY/BOARD: Department of Administration

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Accounting and financial reporting standards, report filing fees, filing penalties, waivers and extensions of penalties, audit and audit reporting standards, the roster of independent auditors, audit contracts, resolution and corrections of audit findings, financial reviews, and incorporation by reference of various standards, accounting policies, and federal laws and regulations

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Proposed Amendment and Repeal

SUMMARY OF RULE(S):

On June 11, 2019, the Department of Administration ("Department") proposed amending nine rules relating to financial accounting, auditing, and reporting, and it proposed to repeal one rule relating to audit contracts.

After reviewing the proposal, staff identified several potential issues. In response, the Department has filed an amended notice proposal with the Secretary of State addressing the concerns that will be published in the upcoming Montana Administrative Registrar.

Under the original proposal, the Department notified the sponsor of Chapter 73, L. 2019.

However, staff identified additional bills sponsors of bills that impacted the proposal notice. Under section 2-4-302, MCA, "[i]f the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice . . . is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action." Since the original notice, the Department has notified the additional bill sponsors, and in the amended proposal, it extended the comment period until August 9, 2019.

The remainder of this memo summarizes the Department's proposal as amended by the newest notice.

The department proposes to amend one rule concerning accounting and financial reporting standards. The proposal clarifies that special purpose districts are required, by default, to adhere to the accounting and financial reporting standards adopted by the Governmental Accounting Standards Board, and it provides that, if approved by the department, a local government may alternatively adhere to the provisions described in the small government financial reporting framework as authorized under Chapter 73, L. 2019. The proposal also deletes unnecessarily repeated statutory requirements.

The department proposes to amend one rule concerning report filing fees. The proposal clarifies how revenue of a local government will be determined for the purposes of determining a filing fee and how any differences in filing fees arising from changes between projected revenues and audited revenues will be settled. The proposal also deletes unnecessarily repeated statutory language and amends the filing fee for local government entities which have revenues in excess of \$750,000 rather than \$500,000, in accordance with Chapter 439, L. 2017.

The department proposes to amend one rule concerning penalties for failure to file a report within the prescribed time. The proposed language bases the penalty on 10% of the required report filing fee or, if no fee is required for the local government entity, the minimum filing fee. In addition, the rule specifies that the department assess the monthly penalty when a local government entity does not submit an annual financial report by the due date, or, rather than imposing the penalty, the department may issue an order to withhold payment of any state financial assistance to the local government entity, and if state financial assistance is withheld, the department will release it only upon receipt of the required report. Additionally, the proposed amendments delete language concerning the statutory ability of the department to grant an extension or waive fines, fees, and other penalties if the local government entity demonstrates that it has good cause for the delay. While the statutory exception remains, the proposed changes delete guidance about how the department will determine good cause for the purposes of waiving late fees for required reports. However, another rule, described below, addresses how good cause will be determined for the purposes of determining whether to withhold financial assistance after a repeat substantive finding on corrective action plans.

The rule proposal also states that the department shall assess an additional \$75 fine (up from \$50)

180 days after the required report is past due. The additional fee covers the cost of the statutory requirement that the department provide public notice that the local government entity has failed to file its report. The department notes that "[t]he \$75 fee per publication reflects recent costs associated with average newspaper publication costs and employee processing costs. Average costs are expected to range between \$71 and \$79 for the next five years. The proposed fee is estimated to annually affect 53 local government entities for an annual cumulative amount of \$3,975."

The department proposes to amend one rule concerning the penalty for failing to pay the filing fee within 60 days of the due date. The proposal deletes language requiring the department to notify a local government of the filing fee requirement if it is not submitted with the annual financial report, the amount due, and the penalties for failure to pay. The proposal also makes a monthly penalty equal to 10% of the required filing fee mandatory rather than discretionary, and, similar to the previous proposal above, if the revenue and filing fee applicable to the reporting period have not been reported or are not known, the department bases the penalty on 10% of the minimum filing fee. The department "expects no change in penalty revenues as a result of the amendment". Also, similar to the previous rule proposal, this proposal allows the department, under statutory authority, to issue a stop payment order of state financial assistance which is released upon receipt of the filing fee.

The department proposes to amend a rule concerning audit reporting standards by updating outdated references, deleting unnecessarily repeated statutory language, and providing that approved local government entities using the small government financial reporting framework must apply the accounting and financial reporting standards provided elsewhere in rule.

The department proposes to amend one rule concerning independent auditors authorized to conduct audits of local government entities by rewording existing rules, deleting extraneous language, updating statutory cross references, providing requirements concerning peer review processes, updating terminology, and removing a provision penalizing an auditor for a late audit, rather than the local government entity, because the audit requirement applies to the local government entity, not the auditor.

The department proposes to amend one rule concerning actions by governing bodies to resolve or correct audit findings. The department proposes to publish notice of 30 days' delinquency on its website as well as notify the delinquent entity. The proposed changes lay out the criteria for the acceptableness of planned corrective measures and how the department will weigh the significance of findings. The proposal also allows the department to request additional information of a local government entity, specifies when financial assistance must be released, states that if a significant finding is repeated in a subsequent audit, "the department shall withhold financial assistance from the entity" unless good cause is found, specifies what constitutes good cause, provides how the department will determine whether a local government entity will be subject to a financial review, and provides a procedure for notification of state agencies when withholding or releasing financial assistance.

The department proposes to amend one rule concerning financial reviews. Financial reviews are like financial audits, but they are entirely defined by department rule. Until this proposal, financial reviews have been performed by auditors independent of the department, subject to generally the same standards as an audit. This proposal allows the department to perform a financial review itself, rather than using independent auditor working under a contract with the local government entity. The proposal specifies that the department will charge an hourly rate to the local government entity to cover the cost of the financial review. Based upon the department's statement, the average cost of a private CPA firm financial review in 2018 was \$3,053, and the department estimates that it would offer financial review services to 12 local government entities each year, for a total of \$1,050 per review. In addition, the proposal requires the administrative fee for a financial review to be paid within 6 months of the entity's fiscal yearend, rather than 60 days after the date the department notifies the entity that it will be subjected to a financial review. This aligns the financial review administrative fee due date and the annual financial report filing fee date.

The department proposes to update its adoption by reference of various standards, accounting policies, and federal laws and regulations. Previous standards and policies were adopted by reference, and thus any change to the underlying document requires that the rule adopted by reference also be amended. The department proposes to update the Codification of Governmental Accounting and Financial Reporting Standards to the version updated through June 30, 2019, the Government Auditing Standards to the 2011 and 2018 revisions, and the standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements to the June 30, 2019, version. The proposed rule amendments also deletes the chart of accounts (now incorporated into another adoption by reference) and the OMB Circular A-133 (superseded by 2 C.F.R. § 200) that were previously adopted by reference in the rule.

In addition to updating and amending other adoptions by reference, the department proposes to adopt a one-page document entitled "Small Government Financial Reporting Framework" for reporting periods beginning after June 30, 2019. An agency may adopt by reference any "model code, federal agency rule, rule of any agency of this state, or other similar publication if: (a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient; and (b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana." The document proposed to be adopted by reference describes which local governments are eligible to report in accordance with the "small government financial reporting framework", an alternative financial reporting option for small local governments enabled by Chapter 73, L. 2019, and it outlines which provisions are included within the small government financial reporting framework and which provisions are not included.

The department proposes to repeal one rule concerning audit contracts because the current rule unnecessarily repeats statutory language. In addition to repeating statutory requirements for audit contracts, the rule provides that the department will not enter into an audit contract until the independent auditor and local government entity provide all of the information required by the

contract form and that the department will not enter into an audit contract covering more than three consecutive fiscal years.

NOTES: A public hearing was held on July 17, 2019, at 11:00 a.m. in Room 261, Mitchell Building, 125 N. Roberts Street, Helena, Montana. The public comment period ends on August 9, 2019.

FULL TEXT OF NOTICE: The full text of the notice proposal and the amended proposal may be found online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2911. If the amended proposal notice has not been published, committee members that would like to read it may contact staff for a copy.

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