



**Montana Legislative Services Division**  
**Legal Services Office**

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**TO:** State Administration and Veterans' Affairs Interim Committee

**FROM:** K. Virginia Aldrich

**DATE:** July 22, 2022

**RE:** Legislative Administrative Rule Review Report

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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:** 44-2-260

**AGENCY/BOARD:** Secretary of State

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

**SUBJECT:** Business Services Filings

**NOTICE DESCRIPTION:** (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption

**SUMMARY OF RULE(S):**

The Secretary of State proposes to amend seven rules relating to business service filings.

The Secretary of State proposes to amend one rule concerning the Secretary of State's statewide electronic filing system to take out references to partial implementation because the system is now fully implemented. The proposed amendments also delete references to ePass because it was recently discontinued. The proposed amendments provide that users submitting a business filing that is returned (rather than rejected) have 90 days (rather than 100 days) to resubmit the document to "better align with system functionality."

The Secretary of State proposes to amend one rule concerning corporation filing fees. The proposed amendments list the fee for filing articles of conversion at the same rate as articles of merger. The amendments also clarify terminology in the rule.

The Secretary of State proposes to amend one rule relating to limited liability company filing

fees. The proposed amendments repeal \$50 fees for filing each series member named in a series LLC for domestic articles of organization or articles of amendment, or foreign certificates of authority and amended certificates of authority. However, the proposal inserts a new \$50/new member fee for any series member added to a series LLC. The Secretary of State notes that this is to "eliminat[e] unnecessary repetition of fees that apply to both domestic and foreign filings." The amendments also clarify terminology in the rule.

The Secretary of State proposes to amend three rules concerning assumed business name fees, trademark fees, and miscellaneous fees. The following proposed changes in the rules are substantively the same. In all three rules, the proposed amendments eliminate reprocessing fees for paper filings because all filings are now electronic, eliminate a provision concerning documents filed with inadequate funds requiring a reprocessing fee after rejection, and clarify terminology. In addition, in the rule concerning miscellaneous fees, the Secretary of State proposes to eliminate a duplicate fee for issuing an online certificate of fact and eliminate a fee concerning documents returned by fax because it is no longer relevant to filings submitted electronically. The proposed changes also provide that bulk data for corporation fees are charged at 2 cents per record, rather than referring users to the Secretary of State's website, and they eliminate additional fees for priority handling of resubmitted materials (businesses only pay a priority handling fee upon the initial submission).

The Secretary of State proposes to amend one rule concerning access to public information and fees for copies by updating a clerical error to an internal cross reference.

Because of a bill reorganization concerning corporations in 2019, one of the rules proposed to be amended has citations to outdated statutes. Staff has contacted the Secretary of State to update these references to ensure each affected rule has the proper rulemaking authority and implementation statutes listed. They have agreed to update and have provided the proposed updates, which provide the proper updated authority.

The Secretary of State notes that the changes will have a fiscal impact. The Secretary of State provided the following statement:

With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these two of the proposed changes will have a fiscal impact. It is estimated that approximately 5,000 [businesses] will be impacted each year by the fee changes which will result in an estimated \$124,000 annual savings for those businesses. The estimated impact for each fee is below.

#### 44.5.121(3)(a) - Miscellaneous Fees

- An estimated 31,000 businesses request 24-hour priority processing each year. Of those, an estimated 4,700 had to resubmit their filing due to corrections and chose to pay for priority processing on the resubmission. With this change, businesses choosing priority processing will only pay

the fee upon the original submission. An estimated 4,700 businesses will save \$94,000 annually with this change.

#### 44.5.121(3)(b) - Miscellaneous Fees

- An estimated 2,200 businesses request one-hour expedited processing each year. Of those, an estimated 300 had to resubmit their filing due to corrections and chose to pay for expedited processing on the resubmission. With this change, businesses choosing expedited processing will only pay the fee upon the original submission. An estimated 300 businesses will save \$30,000 annually with this change.

The Secretary of State did not provide additional fee information for the elimination of other proposed fees within the proposed amendments, presumably because most changes eliminated repetitive fees or, pursuant to their language, above, concerning proposed changes with a fiscal impact, the Secretary of State determined that there would not be a financial impact. However, statute provides that if an agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, the notice must include an estimate, if known, of the cumulative amount for all persons of the proposed increase, decrease, or new amount; and the number of persons affected. Section 2-4-302, MCA. Staff has requested that in future to eliminate confusion about whether the Secretary of State has complied with the fee statements required by statute, that the Secretary of State affirmatively state in the notice if the estimate of other affected fees is not known or if the cumulative fiscal impact is \$0 and the number of persons is also zero. The Secretary of State noted that the agency did not view the proposed changes as falling into the statutory required categories of adopting, increasing, or decreasing a fee but rather were administrative in nature. However, the Secretary of State acknowledged the feedback, and stated that the Secretary of State would bear it in mind for future notices to ensure compliance with statutory requirements.

The Secretary of State also determined that proposed amendments will directly impact small businesses. The Secretary of State noted:

With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will directly impact small businesses. Based on the Montana Department of Labor and Industry's Quarterly Census of Employment and Wages, 99.9% of all Montana businesses are small businesses. Therefore, it is estimated that approximately 4,995 businesses will be positively impacted by the proposed fee changes.

**NOTES:** A public hearing will be held on August 12, 2022, at 10:30 a.m., Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana. The public comment period ends on August 19, 2022.

**FULL TEXT OF NOTICE:** The full text of the original proposal notice and the amended proposal may be found online at [https://rules.mt.gov/gateway/Cycle\\_Home.asp?CID=3524](https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3524).