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RESERVE

MONTANA ADMINISTRATIVE REGISTER

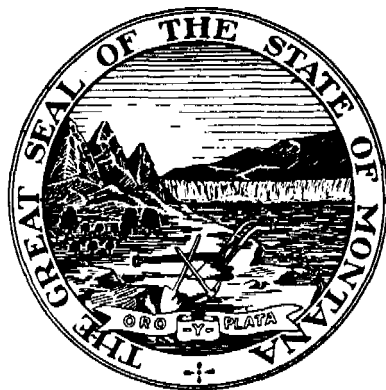
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JUL 16 1981

OF MONTANA

**1981 ISSUE NO. 13
PAGES 662-699**

INDEX COPY



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana, 59620.

13-7/16/81

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|---|
| Known Subject Matter | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
| | 3. Locate volume and title. |
| Subject Matter and Title | 4. Refer to topical index, end of title, to locate rule number and catchphrase. |
| Title Number and Department | 5. Refer to table of contents, page 1 of title. Locate page number of chapter. |
| Title Number and Chapter | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.) |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules. |
| Rule in ARM | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1981. With the exception of this issue of the Montana Administrative Register (MAR), this accumulative table includes all rulemaking action published in each register since March 31, 1981.

To be current on rulemaking, it is necessary to check the ARM updated through March 31, 1981, this table and the table of contents of this issue of the MAR.

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Chapter 529, Laws of Montana 1981, transfers forestry functions of the Department of Natural Resources and Conservation (Title 36, ARM) to the Department of State Lands (Title 26, ARM).

Pursuant to 2-15-133, MCA, the rules of the above departments that were in effect before the effective date of transfer remain in effect until amended, repealed, superseded or nullified by proper authority or law.

The reallocation of the rules will be accomplished by replacement pages to the ARM. The rules on forestry functions will be relocated in Title 26, Department of State Lands, by replacement pages dated June 30, 1981. The rules relocated to the Department of Commerce will be accomplished by replacement pages dated September 30, 1981. Meanwhile, users could refer to the language of the rules inserted under the old titles changing all references to the old departments to pertain to the new department.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule ARM 2.32.101 concerning) ON AMENDMENT OF RULE
the adoption by reference of) ARM 2.32.101 Incorporation
the Uniform Building Code.) by Reference of Uniform
) Building Code

To: All Interested Persons:

1. On August 26, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.101, INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE.

2. The proposed amendment replaces the present rule ARM 2.32.101 found in the Administrative Rules of Montana. This rule was amended with the Notice of Adoption of Amendment appearing in Issue 10, dated May 28, 1981. The proposed amendment would amend the elevator inspection fees to agree with legislative changes made during the 1981 Legislative Session.

3. The rule as proposed to be amended provides as follows:

2.32.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1)(a) - (1)(b)(ii) Same as existing text.

(1)(b) Add a subsection (1)(b)(iii) that would read as follows:

(iii) Fees When Inspections are Made by Certified Inspector and No Follow-Up is Required by the Department
--for each elevator, escalator, moving
walk \$10.00

(1)(c) - (g) Same as existing text.

(2) - (4) Same as existing text.

4. The Division is proposing this amendment to rule ARM 2.32.101 in order to amend the elevator inspection fees to agree with legislative changes made during the 1981 Legislative Session.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than August 26, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

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7. The authority of the agency to make the proposed rule amendment is based on sections 50-60-104, 50-60-203 and 50-60-701, MCA and the rule implements sections 50-60-104, 50-60-203 and 50-60-701, MCA.

MORRIS BRUSETT, Director
Department of Administration

By: Morris L. Bruset
Morris L. Bruset

Certified to the Secretary of State July 2, 1981

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule ARM 2.32.105 concerning) ON AMENDMENT OF RULE ARM
the Adoption of the Uniform) 2.32.105 Incorporation by
Mechanical Code by reference.) Reference of Uniform Mechan-
ical Code

TO: All Interested Persons:

1. On August 26, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.105, INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE.

2. The proposed amendment replaces present rule ARM 2.32.105, found in the Administrative Rules of Montana. This rule was amended with the Notice of Adoption of Amendment appearing in Issue 10, dated May 28, 1981. The proposed amendment would adopt new inspection fees.

3. The rule as proposed to be amended provides as follows:

2.32.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1)(a), (1)(c), (1)(d), (1)(e), (2), (3), Same as existing text.

(1)(b) The fees contained in section 304 shall be deleted and replaced with the following:

--for the issuance of each permit	\$ 5.00	<u>10.00</u>
--for the installation or relocation		
of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h	8.00	<u>11.00</u>
--for the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h	10.00	<u>13.00</u>
--for the installation or relocation of each floor furnace, including vents	7.50	<u>10.00</u>
--for the installation or relocation of each suspended heater, recessed wall heater, or floor mounted unit heater	7.50	<u>10.00</u>
--for the installation, relocation, or replacement of each appliance vent installed and not included in an appliance permit	3.00	<u>4.00</u>

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--for the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption, or evaporative cooling system, including installation of controls regulated by this code	5-00	<u>7.00</u>
--for the installation or relocation of each boiler or compressor to and in- cluding three horsepower, or each absorption system to and including 100,000 Btu/h	5-00	<u>7.00</u>
--for the installation or relocation of each boiler or compressor over three horsepower to and including 15 horse- power, or each absorption system over 100,000 Btu/h and including 500,000 Btu/h	10-00	<u>13.00</u>
--for the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 Btu/h to and including 1,000,000 Btu/h	15-00	<u>20.00</u>
--for the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 Btu/h to and including 1,750,000 Btu/h	20-00	<u>27.00</u>
--for the installation or relocation of each boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 Btu/h	50-00	<u>67.00</u>
--for each air handling unit to and including 10,000 cubic feet per minute, including ducts attached thereto	5-00	<u>7.00</u>
NOTE: This fee shall not apply to an air handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler, or absorption unit for which a permit is required elsewhere in this code.		
--for each air handling unit over 10,000 cfm	10-00	<u>13.00</u>
--for each evaporative cooler other than portable type	-5-00	<u>7.00</u>

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--for each ventilation fan connected to a single duct	2.00	3.00
--for each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit	5.00	7.00
--for the installation of each hood which is served by mechanical exhaust, including the ducts for such hood	5.00	7.00
--for the installation or relocation of each domestic type incinerator	10.00	13.00
--for the installation or relocation of each commercial or industrial type incinerator	35.00	47.00
--for each appliance or piece of equipment regulated by this code but not classed in other appliance categories, or for which no other fee is listed in this code	5.00	7.00
--requested inspection fee - \$30, provided that such service is not in excess of 1 hour in duration, and then \$15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.		

4. The Division is proposing the rule amendment to its rules to raise the inspection fees to keep up with the increased operating costs of the program.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than August 26, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 50-60-203, MCA, and the rule implements sections 50-60-104 and 50-60-203, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State July 2, 1981

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of rule ARM 2.32.202 concerning) AMENDMENT OF RULE ARM
the extent of local code en-) 2.32.202 concerning the
forcement programs.) extent of local code enforce-
ment programs

To: All Interested Persons:

1. On August 26, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena Montana, to consider the amendment of rule ARM 2.32.202, EXTENT OF LOCAL PROGRAMS.

2. The proposed amendment replaces the present rule ARM 2.32.202 found in the Administrative Rules of Montana. The proposed amendment redefines the county's code enforcement authority to agree with the legislative changes made during the 1981 Legislative Session.

3. The rule, as proposed to be amended, provides as follows:

2.32.202 EXTENT OF LOCAL PROGRAMS (1) Delete subsection (1) in its entirety (found on page 2-2691 of ARM).

(2) (1) Counties and municipalities, as provided by 50-60-102, MCA, may adopt codes to cover only public places; meaning any place which a county, municipality, or the state maintains for the use of the public or a place where the public has a right to go and be. Public places, as thus construed, mean any building used for residential occupancy, duplex and above, or any commercial occupancy; all buildings within their jurisdictional area. However, as provided by 50-60-102, a county or municipality may not cover residential buildings containing less than five dwelling units or their attached to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use unless the local legislative body or board of county commissioners by ordinance or resolution makes the building code specifically applicable to those structures.

4. The Division is proposing this amendment to rule ARM 2.32.202 in order to amend the extent of local code enforcement programs to agree with legislative changes made during the 1981 Legislative Session.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana

BUILDING CODES DIVISION

59620, no later than August 26, 1981.

6. Jonn Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule amendment is based on section 50-60-302, MCA and the rule implements section 50-60-302, MCA.

MORRIS L. BRUSETT, Director
Department of Administration.

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State July 2, 1981

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule ARM 2-32-302 concern-) ON AMENDMENT OF RULE
ing the Adoption of the Uniform) ARM 2.32.302 Incorporation
Plumbing Code by reference.) by Reference of Uniform
Plumbing Code

To: All Interested Persons:

1. On August 26, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.302, INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE.

2. The proposed amendment replaces present rule ARM 2.32.302, found in the Administrative Rules of Montana. The proposed amendment would adopt new inspection fees, make sewer back water valves permissive rather than mandatory, provide disinfective guidelines for new and repaired water systems, and provide for plastic water service to terminate inside a building.

3. The rule as proposed to be amended provides as follows:

2.32.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Plumbing Code, 1979 Edition, with the following amendments thereto as amended by this rule. The Uniform Plumbing Code, 1979 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code, 1979 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032. The Uniform Plumbing Code, 1979 Edition, adopted herein by reference, is amended as follows:

Subsections (1)(a) through (1)(b)(ii). Same as existing text (found on ARM page 2-2709).

(iii) Sec. 20.7, Cost of Permit, page 4a. Delete the Schedule of Fees and replace with the following schedule:
--for issuing each permit \$ 5+00 10.00
--for each plumbing fixture or trap or
set of fixtures on one trap (including
water, drainage piping, and backflow
protection therefore) 3+00 4.00

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--water service - domestic or commercial .	3-00	4.00
--for each building sewer and each trailer park sewer	5-00	7.00
--storm drains and storm drainage	2-00	4.00
--for each water heater	3-00	4.00
--for each gas piping system of one to four outlets	3-00	4.00
--for each gas piping system of five or more per outlet	75	1.00
--for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	4-00	5.00
--for installation, alteration, or repair of water piping and/or water treatment equipment	3-00	4.00
--for repair or alteration of drainage or vent piping	3-00	4.00
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	3-00	4.00
--for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--one to four . .	3-00	4.00
--five or more, each	75	1.00
--reinspection (provided the \$15 20 does not exceed the original permit fee, in which case the original fee will be charged) .	15-00	20.00
*except for replacement of water heaters		

Subsections (1)(b)(iv) through (1)(b)(ix). Same as existing text (found on ARM pages 2-2710 and 2-2711).

(x) Sec. 409(a), Drainage Below Curb and Also Below Main Sewer Level, page 41, line 5, amend to read as follows: "gravity into the main sewer, and ~~shall~~ may be protected from backflow of."

~~(x)~~ (xi) Sec. 503(a), Materials, Item 2, page 45. Amend to read as follows: "2. ABS or PVC installations limited to residential, commercial, institutional, and industrial construction not more than two (2) stories in height."

~~(x)~~ (xii) Sec. 506(a) and (c), Vent Termination, pages 46-47. Change "six inches" to 12 inches."

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(xiii) Sec. 1004(a), Materials, page 75, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron; galvanized steel, lead or other approved materials. Asbestos-cement, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

(xiv) Sec. 1008, Installation, Inspection and Testing, page 77, after subsection (e) add the following new subsection (f): "(f) Disinfection. (1) When required by the administrative authority having jurisdiction, potable-water systems or any part thereof installed or repaired shall be disinfected in accordance with one of the following methods:

- by filling the system or any part thereof with a solution containing 50 parts per million of available chlorine and allowing it to stand for a minimum period of 6 hours before flushing.
- by filling the system or any part thereof with a solution containing 100 parts per million of available chlorine and allowing it to stand for a minimum period of 2 hours before flushing.
- In the case of a potable-water storage tank where it is not possible to disinfect by one of the above methods, the entire interior of the tank shall be swabbed with a solution containing 200 parts per million of available chlorine and allowing to stand 2 hours before flushing.
- In the case of potable-water filters or similar equipment, the mixture shall be determined by the administrative authority having jurisdiction."

~~(xiii)~~ (xv) Sec. 1009(h), Size of Portable Water Piping, page 79. Amend the second paragraph to read: "No building supply pipe shall be less than 3/4 inch in inside diameter."

~~(xiii)~~ (xvi) Sec. 1101, Sewer Required, page 85. Delete (c), (d), and (e).

~~(xiii)~~ (xvii) Sec. 1109 through 1118. Delete these sections completely. The section on private sewer systems shall be as required by the state department of health and environmental sciences.

BUILDING CODES DIVISION

~~(xvii)~~ (xviii) Appendix E, Mobile Home Parks, pages 162-174. Delete.
~~(xviii)~~ (xix) Appendix G, Swimming Pools, pages 175-176. Delete.
~~(xix)~~ (xx) Appendix C, Minimum Plumbing Facilities, pages 152-153. Delete. Rule ARM 2.32.303 will be used in lieu of Appendix C.
~~(xx)~~ (xxi) Appendix I, Private Sewage Disposal Systems, pages 177-191. Delete.

Subsection (2). Same as existing text (found on ARM page 2-2711).

4. The Division is proposing the rule amendment to its rules to raise the inspection fees to keep up with the increased operating costs of the program, make sewer back water valves permissive rather than mandatory, provide disinfective guidelines for new and repaired water systems, and provide for plastic water service to terminate inside a building.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than August 26, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-504, MCA, and the rule implements sections 50-60-203 and 50-60-504, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State July 2, 1981

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule ARM 2.32.407 concern-) ON PROPOSED AMENDMENT OF
ing the State Electrical Code.) RULE ARM 2.32.407 concerning
) the State Electrical Code

To: All Interested Persons:

1. On August 26, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.407 ELECTRICAL INSPECTION FEES.

2. The proposed amendment replaces the present rule ARM 2.32.407 found in the Administrative Rules of Montana. The proposed amendment would adopt new inspection fees, previously heard at a hearing on February 27, 1981 and later amended during conference meetings with those persons appearing at the hearing.

3. The rule, as proposed to be amended, provides as follows:

2.32.407 ELECTRICAL INSPECTION FEES (1) - (8). Delete existing subsections (1) through (8) in their entirety and replace with new subsections (1) through (3) that would read as follows:

(1) The following is the schedule of electrical inspection fees:

<u>Type of Installation</u>	<u>Permit Fee</u>
--temporary construction service	no separate charge
--single-family dwellings (includes garage wired at the same time as the house)	
125 to 200 amp service	\$ 65
201 to 300 amp service	100
301 or more amp service	125
--private property accessory buildings (garages, barns, sheds, etc.)	
125 to 200 amp panel	30
201 to 300 amp panel	75
301 or more amp panel	100
--multi-family dwellings (duplex through 12 units) per dwelling unit	30*
*For buildings containing more than 12 units, use the commercial schedule that follows.	
--interior rewire only or new addition to a home	35
--change of service	20
--mobile home installation (in a court)	20

BUILDING CODES DIVISION

--mobile home installation (outside a court)	\$30
--modular homes	
no basement	30
with a basement and/or garage	50
--mobile home courts and/or recreational	
vehicle parks (new, rewire, or addition)	
first 3 spaces (per space)	10
additional spaces over 3 spaces (per space)	3
--new service only (livestock well, irrigation	
well, etc.)	30
--irrigation pumps or machines	
per unit (one pump and/or one pivot)	25
--all other installations (commercial,	
industrial, institutional, or for public use):	

<u>Cost of Electrical</u>	<u>Fee</u>
<u>Installation</u>	
0 - \$ 1,000	\$30
\$ 1,001 - \$10,000	\$30 for 1st \$1,000 plus 1.5% of balance of construction cost
\$10,001 - 50,000	\$165 for 1st \$10,000 plus .5% of balance of construction cost
\$50,001 or more	\$365 for 1st \$50,000 plus .3% of balance of construction cost

--temporary construction service (for
commercial, industrial, institutional,
or public use jobs only) 20

NOTE: This additional \$20 fee is required
in addition to the above inspection
fees if a temporary service will be used,
and is to be paid at the same time as
the regular permit fee before con-
struction begins.

(2) If the application for permit and the proper fees,
as determined under subsection (1) of this rule, are not
sent to the electrical safety bureau prior to or upon
commencement of the electrical work, the fees will be
doubled and will have to be paid before the permit will
be issued.

(3) The fee for a requested electrical inspection is
\$30, provided that such service is not in excess of 1
hour in duration, and then \$15 for each 30 minutes or
fractional part thereof in excess of 1 hour. Travel and

BUILDING CODES DIVISION

per diem will also be charged at the rates established under Title 2, chapter 18, part 5, MCA.

4. The Division is proposing this amendment to its rules to raise the inspection fees to keep up with the increased operating costs of the program.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than August 26, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on sections 50-60-104, 50-60-203, 50-60-603, and 50-60-604, MCA, and the rule implements sections 50-60-104, 50-60-203, 50-603, and 50-60-604, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State July 2, 1981

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENT OF
amendments of ARM 40.42.404) ARM 40.42.404 EXAMINATION and
examination and 40.42.405 con-) 40.42.405 RENEWALS
cerning renewals)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 15, 1981, the Board of Plumbers proposes to amend ARM 40.42.404 concerning examinations and 40.42.405 concerning renewals.

2. The proposed amendment to ARM 40.42.404 will read as follows: (new matter underlined, deleted matter interlined)
40.42.404 EXAMINATION (1) All applications must be submitted on forms furnished by the department ~~30~~ 60 days prior to the examination and must be accompanied by the ~~\$50.00~~ 75.00 examination fee. Those applications received after the deadline will be processed for the following examination. Re-examination fees, which are ~~\$50.00~~ 75.00, must also be submitted ~~30~~ 60 days prior to the examination.

(2) Examinations to determine the fitness of an applicant, either master plumber or journeyman plumber, will be held at the pleasure of the board, at not less than 3 month intervals. The number of the examinees will be limited to a total number of 30 per examination. The examination, will be held in the city of Helena, Montana, unless the board specifically designates a different place for any such examination.

(3) Special examinations may be held in event the examination date and place regularly set by the board conflicts with religious beliefs of the applicant, and in that event, the applicant may petition the board by letter requesting such special examination. If the board allows such a special examination, it shall set a time and place thereof in its discretion.

(4) All applicants, master and journeyman, will be required to successfully complete a written and practical examination before the appropriate licenses will be issued.

(5) Examination papers may be reviewed in the board office for a period of 30 days immediately following the examination date only. Note taking will not be allowed during the time of review.

(6) Any applicant for the master's license who shall sit for and fail the master's examination 2 consecutive times will not be allowed to retake the examination for a period of 1 year commencing with the date of the last examination that he failed.

(7) All applicants for licensure as a journeyman plumber who shall fail the examination for the second

time are reduced to apprenticeship status and shall not be allowed to apply for and take the examination until the expiration of one year from the date of the second examination failure.

(8) When an applicant fails to take the first examination for which he was scheduled, he may have his application fee apply towards the next examination for which he is scheduled. However, if the applicant fails to take the second examination, his fee shall be forfeited and application for any subsequent examination will require another application fee."

3. The board is proposing the increase in examination fees as several years ago the board lowered the fees to less than the actual cost of the examination to deplete the surplus earmarked revenue. The board is finding the depletion is occurring faster than anticipated, therefore is requesting the increase at this time to prevent a large future increase. The board is requesting the additional time for applications to be submitted to allow more time for the applicants to obtain additional verification of time if necessary.

4. The proposed amendment of 40.42.405 will read as follows: (new matter underlined, deleted matter interlined)

"40.42.405 RENEWALS (1) Renewal notices may be mailed prior to the expiration of the license by the department, at the discretion of the board, to the address on file. It shall be the responsibility of the licensee to keep his current address on file with the board.

(2) The annual renewal fee for a master plumber shall be ~~\$10.00~~ \$15.00.

(3) The annual renewal fee for journeyman plumber shall be ~~\$10.00~~ 15.00.

(4) All master and journeyman licenses expire by law one year from date of issuance of last renewal. Any licensee who fails to renew on or prior to the expiration date will be allowed 30 days from the expiration date as a late renewal grace period. If the license is not renewed on or before the expiration of the 30 days, the license will expire and in order to reinstate the license, a new application and successful completion of an examination will be required. Under no circumstances will the licensee be allowed to work as such during that 30 day period."

5. The board is proposing the increase in renewal fees for the reasons stated in 3. above.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Plumbers, Lalonde Building, Helena, Montana 59620 no later than August 13, 1981.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally

or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Plumbers, Lalonde Building, Helena, Montana 59620 no later than August 13, 1981.

8. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

9. The authority of the board to make the proposed amendments is based on section 37-69-202, MCA and both amendments implement section 37-69-307, MCA.

BOARD OF PLUMBERS
WALTER E. TYNES, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 6, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
ADOPTION OF RULES)	FOR ADOPTION OF RULES
specifying cultural and)	Cultural and Aesthetic
aesthetic project grants)	Project Grants
conditions.)	

TO: All Interested persons:

1. On August 22, 1981 at 1:30 P.M., a public hearing will be held in the Auditorium of the Scott Hart Building, 303 Roberts St., Helena, Montana, to consider the adoption of rules which specify cultural and aesthetic projects grant conditions.

2. The proposed rules do not replace or modify any currently found in the Montana Administrative Code.

3. The proposed rules provides as follows:

RULE I - GRANT PROPOSALS (1) Any department, agency, board, commission, or other division of the state government or any local government unit is eligible to submit a proposal for a cultural and aesthetic project, utilizing funds created by section 15-35-108(h)(i), MCA.

(2) Grant proposals utilizing these funds must be submitted to the board of trustees of the montana historical society by December 1 of the year preceding the convening of a legislative session.

(3) Grant proposals shall contain a detailed description of project goals, scope, purpose, activities, budget by line item, and duration of the grant period.

AUTH: H.B. 871, 47th Legislature; 22-3-107, MCA IMP: H.B. 871, 47th Legislature; 22-3-112, MCA

RULE II - SUBMISSION OF PROPOSALS TO THE LEGISLATURE

(1) The board of trustees of the society shall present to the legislature by the 15th day of any legislative session all grant proposals received accompanied by evaluations and recommendations for funding.

(2) A selection committee consisting of three private citizen professional members chosen from varying cultural fields shall review, evaluate and recommend proposals for funding based on the following evaluation criteria:

(a) Will the project serve a large number of people?

(b) Will the project result in a definite product?

(c) Will the project add to a balanced geographical coverage of the state?

(d) Is the total cost of the project in proportion to its benefits?

AUTH: H.B. 871, 47th Legislature; 22-3-107, MCA IMP: H.B. 871, 47th Legislature; 22-3-112, MCA

RULE III - GRANT CONDITIONS (1) No grants shall be issued if the grantee fails to accept the conditions of the grant or fails to sign a contract stipulating the conditions of the grant.

(2) The grantee must agree that the funds granted shall be expended solely for the activities described in the approved proposal. Should the grant award not prove adequate for the administration of the project as originally submitted the grantee shall submit prior to the grant period modifications to the proposal and an operational budget supporting these modifications. Any funds granted must be committed within the grant period.

(3) The grantee shall maintain accounts, records, and other evidence pertaining to the costs incurred under this grant. The system of accounting employed by the grantee shall be in accordance with generally accepted accounting principles and will be applied in a consistent matter so that the project expenditures can be clearly identified. Records must be maintained for three years from the official termination date of the grant period or until an approved audit has been completed and any questions arising from it have been resolved, whichever is the less period.

(4) Grantees will submit semi-annual reports of expenditures during the course of the project, and such other financial reports and descriptive reports as the society may require. In all cases the grantee is required to submit, within 30 days after completion of the project a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award will be held pending receipt of final reports by the society.

(5) During the time set out in the above paragraph the grantee agrees that the state government shall have access to and the right to examine any directly pertinent books, documents, papers and records of the grantee involving transactions related to this grant at the principal place of business of grantee during regular business hours.

(6) The grantee must agree that it is the official and sole agency for the administration of the projects described in this contract.

AUTH: H.B. 871, 47th Legislature; 22-3-107, MCA IMP: H.B. 871, 47th Legislature; 22-3-112, MCA

RULE IV - DISBURSEMENT OF GRANT FUNDS (1) Funds available for expenditure on cultural and aesthetic projects are variable in amount and frequency of collections, therefore, allocation and disbursement of funds shall be discretionary with the society based upon availability of funds and the

following criteria:

(a) Those projects of an on-going nature during the course of the full grant period shall receive the first priority for allocation of funds. No project will receive more than 25% of the total grant award during a six month period. An on-going project is defined as a project designed to operate throughout the grant period with full-time staff and other obligations to be met on a monthly basis.

(b) All other projects will be allocated the remaining monies on a percentage basis. That percentage will be determined for each project by dividing the amount awarded each project by the total appropriation for cultural and aesthetic projects.

(c) If actual revenues fall short of the amount appropriated for cultural and aesthetic project grants the shortfall shall be shared equally among all projects on the same percentage basis.

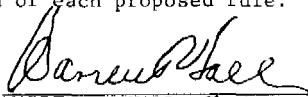
AUTH: H.B. 871, 47th Legislature; 22-3-107, MCA IMP: H.B. 871, 47th Legislature; 22-3-112, MCA

4. The Montana Historical Society is proposing these rules in compliance with the Montana Administrative Procedures Act, House Bill 871, 47th Legislature and its intent that because of the uncertainty of the amount of available funds and the frequency of collections, the Montana Historical Society adopt rules to equitably distribute these funds for cultural and aesthetic projects.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dr. Robert Archibald, Director, Montana Historical Society, 225 North Roberts, Helena, Montana, 59620, no later than August 21, 1981.

6. Brian Cockhill, Administrative Officer, Montana Historical Society, 225 North Roberts, Helena, Montana, 59620, was designated to preside over and conduct the hearing.

7. The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

By: 
WARREN P. HALL, Chairman
Board of Trustees

Certified to the Secretary of State July 6, 1981.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF THE PUBLIC
Rule 46.12.2002 pertaining to	)	HEARING ON PROPOSED
requirements of physician serv-	)	AMENDMENT OF RULE
ices, abortion procedures	)	46.12.2002 PERTAINING
	)	TO PHYSICIAN SERVICES,
	)	ABORTION PROCEDURES

TO: All Interested Persons

1. On August 6, 1981, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.2002 pertaining to requirements to physician services, abortion procedures.

2. The rule proposed to be amended provides as follows:

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Utilization and peer review of physician services shall be conducted by the designated review organization.

(2) Physician services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the medicaid program except in such cases where it can be demonstrated that the physical and psycho-social wellbeing of the recipient is severely affected in a detrimental manner. Such services must be prior authorized by the economic assistance division and will be based on recommendations of the designated peer review organization.

(a) The request for authorization shall include all relevant information to justify the need for the service. This information shall include statements from a physician qualified in the area of concern, a potential provider, and a social worker involved with the case.

(b) The information must clearly document the necessity for the service and assurance that the plan will be followed to completion.

(3) Physicians' services provided for sterilization procedures must meet the following requirements in order to receive medicaid reimbursement:

(a) The recipient to be sterilized must not be declared mentally incompetent by a federal, state, or local court of law.

(b) The recipient to be sterilized must be at least 21 years old at the time of informed consent to sterilization.

(c) The recipient to be sterilized must not be institutionalized in a corrective, penal, mental, or rehabilitative facility.

(d) The recipient to be sterilized must give informed consent, in accordance with the medicaid approved informed consent to sterilization form, not less than 30 days nor more than 180 days prior to sterilization except in the case of premature delivery or emergency abdominal surgery. For these exceptions, at least 72 hours must pass between informed consent and the sterilization procedure. In cases of premature delivery, informed consent must have been given at least 30 days before the expected delivery date.

(e) The recipient to be sterilized, the person who obtained the consent, and the interpreter (if required) must sign the informed consent form at least 30 days but not more than 180 days prior to the sterilization. The physician performing the sterilization must sign and date the informed consent form after the sterilization has been performed.

(f) A copy of the informed consent to sterilization form, must be attached to the medicaid claim when billing for sterilization procedures.

(4) Physician services for hysterectomies must meet the following requirements in order to receive medicaid reimbursement:

(a) medicaid reimbursement for hysterectomies which are solely for the purpose of rendering the recipient incapable of reproducing is prohibited;

(b) medicaid reimbursement for a hysterectomy is allowed only when the surgery is medically necessary to treat injury or pathology;

(c) the physician must inform the recipient that the hysterectomy will render her permanently incapable of reproducing; and

(d) a completed copy of the approved acknowledgement of receipt of hysterectomy information form must be attached to the medicaid claim when billing for hysterectomy services.

(5) Physician services for abortion procedures must meet the following requirements in order to receive medicaid payment:

(a) The physician has found, and certified in writing, that on the basis of his/her professional judgement, the life of the mother would be endangered if the fetus were carried to term. The certification must contain the name and address of the patient and must be on or attached to the medicaid claim.

(b) The recipient was a victim of rape or incest and the incident was promptly reported to a law enforcement or public health agency and there is signed documentation stating:

(i) the person upon whom the abortion was performed was reported to have been the victim of an incident of rape or incest;

(ii) the date on which the incident occurred;

(iii) the date on which the report was made which must have been within 60 days of the date on which the incident occurred;

(iv) the name and address of the victim and the name and address of the person making the report (if different from the victim); and

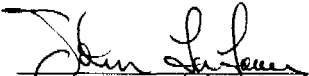
(v) signature of the person who reported the incident. The above signed documentation must be attached to the medical claim.

3. The Department is amending ARM 46.12.2002 because Federal Financial Participation (FFP) is no longer available for abortions for victims of rape or incest and it is the intent of the Montana legislature that the Department not use 100% state funds for neither abortion or medical services.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than August 14, 1981.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-113, MCA, and 53-6-141, MCA.


Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 40.14.602 concerning) 40.14.602 ALLOWABLE FUNCTIONS
allowable functions for dental) FOR DENTAL AUXILIARIES and
auxiliaries and ARM 40.14.605) ARM 40.14.605 EXAMINATIONS
concerning examinations)

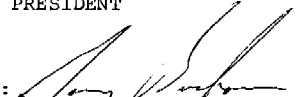
TO: All Interested Persons:

1. On May 28, 1981, the Board of Dentistry published a notice of proposed amendments of ARM 40.14.602 concerning allowable functions for dental auxiliaries and ARM 40.14.605 concerning examinations at pages 500 through 503, Montana Administrative Register, issue number 10.

2. The board has amended the rules exactly as proposed.

3. Comments were received from the Montana Dental Hygienists Association expressing its concerns relating to enforcement and "direct supervision". The board feels the proposed rules are compatible with present enforcement and supervision rules and statutes. No other comments or testimony were received.

BOARD OF DENTISTRY
WILLIAM G. THOMAS, D.D.S.
PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 6, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of ARM 40.52.416 concerning) 40.52.416 - RECIPROCITY -
reciprocity - other nations) OTHER NATIONS

TO: All Interested Persons:

1. On May 28, 1981 the Board of Public Accountants published a notice of proposed amendment of ARM 40.52.416 concerning reciprocity for other nations, at pages 504 and 505, 1981 Montana Administrative Register, issue number 10.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 6, 1981.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF
of rule 32.15.211 concerning)	RULE 32.15.211
livestock market responsi-)
bility for compliance with)	
animal health rules.)	

TO: All Interested Persons

1. On April 6, 1981 the Department of Livestock published notice of a proposed rule concerning Livestock Market Responsibility at page 346 of the 1981 Montana Administrative Register, issue number 7.
2. The agency has adopted rule 32.15.211 as proposed.
3. No comments or testimony were received.
4. The authority for the rule is based on section 81-2-102 MCA and the same section is being implemented.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock


By: JAMES W. GROSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State July 6, 1981.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF ADOPTION OF A RULE
ADOPTION OF A RULE DESCRIBING)		ON THE USE OF CENSUS DATA
THE APPLICATION OF CENSUS	)	UNDER THE QUOTA SYSTEM.
DATA TO THE DETERMINATION OF	)	ARM 42.12.104
THE NUMBER OF ALCOHOLIC)	
BEVERAGE LICENSES UNDER THE)	
QUOTA SYSTEM.)	

TO: All Interested Persons:

1. On May 28, 1981, the Department of Revenue published notice of the proposed adoption of a rule relating to the use of census data under the quota system at pages 506 and 507 of the 1981 Montana Administrative Register, issue no. 10.
2. The Department has adopted the rule as proposed.
3. One letter in support of the proposal was received.



ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 6/29/81

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF THE
Rule 46.12.550 pertaining to	)	AMENDMENT OF RULE
home health services, definition	)	46.12.550 PERTAINING
	)	TO HOME HEALTH
	)	SERVICES

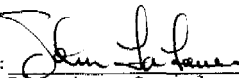
TO: All Interested Persons

1. On May 28, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46.12.550 pertaining to home health services, definition, at page 512 of the Montana Administrative Register, issue number 9.

2. The agency has amended the rule as proposed.

3. No written testimony was received. Comments received at the public hearing supported the amendment as it will bring about a more equitable schedule of reimbursement for all providers of physical therapy, regardless of the environment in which it is rendered.

By:



Director, Social and
Rehabilitation Services

Certified to the Secretary of State July 6, 1981.

VOLUME NO. 39

OPINION NO. 21

COUNTY COMMISSIONERS - Discretion to pay overtime to undersheriffs and deputy sheriffs;
COUNTY OFFICERS AND EMPLOYEES - Sheriff: Salary;
COUNTY OFFICERS AND EMPLOYEES - Undersheriffs and deputy sheriffs: compensation, longevity payments, and overtime;
LABOR RELATIONS - Undersheriffs and deputy sheriffs: overtime compensation;
SALARIES - Compensation to undersheriffs and deputy sheriffs;
SALARIES - Longevity payments to undersheriffs and deputy sheriffs;
SALARIES - Sheriffs;
SHERIFFS - Deputies and undersheriffs: compensation computation;
SHERIFFS - Deputies and undersheriffs: amount and time of longevity payments;
SHERIFFS - Deputies and undersheriffs: overtime;
SESSION LAWS OF 1981 - House Bill 558, Senate Bill 50, Senate Bill 305, Chapter 466, Chapter 605;
OPINIONS OF THE ATTORNEY GENERAL - 35 OP. ATT'Y GEN. NO. 25;
MONTANA CODE ANNOTATED - Sections 7-4-2503, 7-4-2505, 39-3-405, 39-3-406.

- HELD: 1. Under House Bill 558 (Chapter 603, L.Mont. 1981), an individual undersheriff or deputy sheriff is entitled to an initial longevity payment on his or her first employment anniversary occurring after October 1, 1981.
2. Under section 5 of House Bill 558, years of service prior to October 1, 1981, must be considered in determining the amount of longevity payments to deputy sheriffs and undersheriffs.
 3. The "minimum base annual salary" for calculating longevity payments under House Bill 558 is the statutory minimum level for the county involved, as specified in section 2(1) and (2) of the bill.
 4. The "salary" of a sheriff, for purposes of calculating the annual compensation of deputy sheriffs and undersheriffs, includes the additional \$2,000 received by the sheriff pursuant to section 7-4-2503(2)(b), MCA.
 5. Under section 4 of House Bill 558, the payment of overtime compensation to undersheriffs and deputy sheriffs is within the discretion of the individual boards of county commissioners.

22 June 1981

Richard P. Heinz, Esq.
Lake County Attorney
Lake County Courthouse
Polson, Montana 59860

Dear Mr. Heinz:

My opinion has been requested on the following questions relating to House Bill No. 558 (Chapter 603, L.Mont. 1981):

1. At what point will individual deputy sheriffs and undersheriffs become entitled to longevity payments?
2. Must years of service prior to October 1, 1981, be considered in determining the amount of longevity payments to deputy sheriffs and undersheriffs or is longevity to be measured only from the effective date of House Bill 558?
3. Should the one percent for each year of service be calculated initially by applying the accumulated years of service to the individual's then annual salary or to the annual salary being received by the individual on each anniversary date of his employment?
4. What constitutes the "salary" of a sheriff for purposes of calculating the compensation of deputy sheriffs and undersheriffs?
5. Must deputy sheriffs and undersheriffs be compensated for hours worked overtime?

House Bill 558 generally revises the compensation provisions of Montana law relating to undersheriffs and deputy sheriffs. The questions raised by the bill pertain primarily to section 5, which requires longevity payments, in addition to compensation, based on years of service with the sheriff's department. Section 5 provides:

Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

Because no specific effective date is set forth in House Bill 558, its compensation and longevity payment provisions will not become effective until October 1, 1981. Chapt. 446, L.Mont. 1981 (SB 305). Therefore, although there may be deputy sheriffs and undersheriffs who have already been employed in sheriffs' offices for a number of years, no individual will be entitled to a longevity payment until his or her first employment anniversary occurring on or after October 1 of this year.

The delay in the effective date of HB 558, however, does not mean that an individual who has served with the department for several years will be entitled to a payment of only 1% on his or her first qualifying anniversary date. The amount of the longevity payments that will become due to undersheriffs and deputy sheriffs after October 1, 1981, is, by the specific terms of the bill, to be calculated on the basis of "each year of service with the department." The legislature did not modify that phrase in any manner or restrict it to cover only those years following the date of approval of the new provision. It is a basic principle of statutory construction that the plain meaning of the words used in a statute controls its application and that words or phrases that alter the plain meaning of the law may not be inserted when it is being interpreted. Chennault v. Sager, Mont. ___, 610 P.2d 173, 176 (1980). Therefore, based on the language used in section 5 of HB 558, it is my opinion that each year in service with the department, whether occurring before or after October 1, 1981, must be considered in fixing the longevity payments to be made to deputy sheriffs and undersheriffs.

Another issue raised by section 5 of HB 558 concerns the proper figure upon which to calculate the 1% longevity payment for deputy sheriffs and undersheriffs. In the early stages of the legislative process, HB 558 referred to "1% of his minimum base annual salary," thereby requiring calculations based on the specific salary level of each individual undersheriff or deputy sheriff. After being considered by a conference committee, however, the bill's language was changed to establish the amount of payment as "1% of the minimum base annual salary." From this change, it must be concluded that the legislature intended to standardize the base figure for longevity payment calculations by statutorily setting that figure at the minimum permissible level for each county, as set forth in the categories in section 2(1) and (2) of HB 558.

HB 558 has also raised certain questions unrelated to longevity payments. One such question concerns the appropriate figure to be used as the basis for computing the compensation for deputy sheriffs and undersheriffs. Section 2 of the bill and the statute it amends require the fixing of the compensation of those working under a sheriff at a percentage of his salary. See § 7-4-2505, MCA. Section 7-4-2503, MCA, establishes the amount to be paid annually to a sheriff as a basic salary, dependent on the size of the sheriff's county, and, in addition, "the sum of \$2,000 per year." See SB 50. Neither HB 558, section 7-4-2505, nor section 7-4-2503 specifically explains whether the additional sum of \$2,000 is to be considered as part of a sheriff's "salary" for purposes of the calculations in section 2 of HB 558.

The salary received by a county officer has been broadly defined by the Montana Supreme Court as "what it ordinarily means: a fixed compensation made by law to be paid periodically for services...." Scharrenbroich v. Lewis and Clark County, 33 Mont. 250, 257, 83 P. 482, 483 (1905). This definition plainly encompasses both statutory amounts paid to a sheriff under section 7-4-2503, MCA. Moreover, in 35 OP. ATT'Y GEN. NO. 25 at 52 (1973), it was specifically held that the additional "sum" received by a sheriff must be considered part of his salary when determining the compensation to be paid to deputy sheriffs, and, by the same reasoning, to undersheriffs.

A final question raised by HB 558 is whether undersheriffs and deputy sheriffs are entitled to compensation for overtime. It is well-established in Montana law that, under the payment schedules established by currently operative statutes for undersheriffs and deputy sheriffs, those persons are excluded from the provisions of the Minimum Wage Act and need not be paid extra compensation for working more than forty hours per week. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971); see § 39-3-406(1), MCA. The same reasoning used by the Supreme Court in the Billings case is equally applicable to the payment schedule set forth in HB 558.

HB 558 contains a new provision, section 3, which gives sheriffs' departments the option of establishing work periods other than standard workweeks, with a maximum schedule of 2,040 hours per employee per year. In apparent contemplation that persons on such a schedule could arguably fall under the coverage of the Minimum Wage Act, the legislature specifically added an exclusion to such coverage for "an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to

[section 3]." HB 558, § 6 (adding (m) to § 39-3-406(2), MCA). Therefore, regardless of their type of work arrangement, deputy sheriffs and undersheriffs will not be covered by the mandatory overtime provisions of section 39-3-405, MCA.

HB 558, however, does include a new provision relating to overtime payments for deputy sheriffs and undersheriffs. Section 4 of the bill provides:

The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

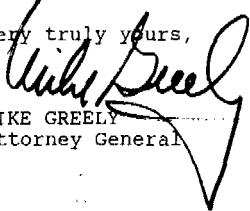
By the use of the word "may" in section 4, it is plain that the legislature intended to leave any action regarding possible overtime payment to the discretion of the individual boards of county commissioners.

THEREFORE, IT IS MY OPINION:

1. Under House Bill 558 (Chapter 603, L.Mont. 1981), an individual undersheriff or deputy sheriff is entitled to an initial longevity payment on his or her first employment anniversary occurring after October 1, 1981.
2. Under section 5 of House Bill 558, years of service prior to October 1, 1981, must be considered in determining the amount of longevity payments to deputy sheriffs and undersheriffs.
3. The "minimum base annual salary" for calculating longevity payments under House Bill 558 is the statutory minimum level for the county involved, as specified in section 2 (1) and (2) of the bill.
4. The "salary" of a sheriff, for purposes of calculating the annual compensation of deputy sheriffs and undersheriffs, includes the additional \$2,000 received by the sheriff pursuant to section 7-4-2503(2)(b), MCA.

5. Under section 4 of House Bill 558, the payment of overtime compensation to undersheriffs and deputy sheriffs is within the discretion of the individual boards of county commissioners.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39

OPINION NO. 22

FIRE DEPARTMENT RELIEF ASSOCIATIONS - Membership of fire chief;
RETIREMENT SYSTEMS - Fire department relief association: membership of fire chief;
MONTANA CODE ANNOTATED - Sections 7-33-4103, 7-33-4106, 7-33-4122, MCA;
OPINIONS OF THE ATTORNEY GENERAL - 23 OP. ATT'Y. GEN. NO. 144, at 389 (1950).

HELD: A chief or assistant chief of a municipal fire department may be a member of the fire department relief association

1 July 1981

Arthur W. Ayers, Jr.
City Attorney
P.O. Box 67
Red Lodge, Montana 59068

Dear Mr. Ayers:

You have asked for my opinion on the following question:

May a chief or assistant chief of a municipal fire department be a member of the fire department relief association?

Section 19-11-102(1), MCA, authorizes the formation of a fire department relief association by "the confirmed members of a fire department," and states: "No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association." Your question is whether a chief or assistant chief is a confirmed member of a fire department within the meaning of this statute. My opinion is that a chief or assistant chief is a confirmed member.

Section 7-33-4103, MCA, specifies the composition of a fire department:

Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may

also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

The procedure for appointment and confirmation is set forth in sections 7-33-4106 and 4122, MCA:

The mayor or manager shall nominate and, with the consent of the counsel or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

7-33-4106, MCA.

Each appointment shall be made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the counsel or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

§ 7-33-4122, MCA. These statutes are plain and unambiguous. See Dunphy v. Anaconda Co., 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968). The confirmed members of a fire department comprise not only firefighters but also the chief and assistant chief or chiefs. Cf. Conley v. Fireman's Relief and Pension Fund Board, 129 Pa.Super. 467, 196 A. 531 (1938) (confirmed fire chief entitled to retirement benefits); see generally State ex rel Russ v. Fire Department Relief Association, 114 Mont. 430, 136 P.2d 989 (1943). 23 OP. ATT'Y GEN. NO. 144, at 389 (1950).

My research has revealed one case from another jurisdiction holding that a fire chief is not eligible for membership in a firemen's pension fund. State ex rel. Harrell v. City of Wabash, 116 Ind.App. 682, 65 N.E.2d 494 (1946). However, the statutory provisions in that case differ from Montana's in one crucial respect. The Indiana statutes clearly distinguish between members of a fire force and a chief. In Montana, as I have indicated above, the statutes contain no such distinction.

THEREFORE, IT IS MY OPINION:

A chief or assistant chief of a municipal fire department may be a member of the fire department relief association.

Very truly yours,



MIKE GRELL
Attorney General