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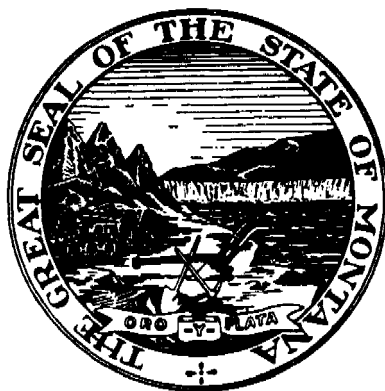
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OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

1984 ISSUE NO. 21  
NOVEMBER 15, 1984  
PAGES 1598-1655



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 21

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment and adoption	)	AMENDMENT OF RULE
of procedural rules.	)	ARM 2.52.344 AND
	)	NOTICE OF ADOPTION OF
	)	PROCEDURAL RULE
	)	(No Public Hearing
	)	Contemplated)

TO: All Interested Persons

1. On December 17, 1984, the Workers' Compensation Court proposes to amend, the procedural rules of the Court, and to adopt a new procedural rule.

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

RULE I ATTORNEY FEES (1) In those cases where the claimant is awarded attorney fees pursuant to Section 39-71-611 or 39-71-612, MCA, the Court will determine and award a reasonable attorney fee in the following manner:

(a) On the date designated for submission of proposed findings of fact and conclusions of law, claimant's attorney shall submit a verified copy of his attorney fee agreement with the claimant. If the fee is based upon an hourly rate, claimant's attorney shall also submit documentation of the number of hours he has spent on claimant's behalf.

(b) In arriving at a reasonable attorney fee for the successful claimant, the Court shall presume that the amount agreed upon between the claimant and his attorney is a reasonable basis for the award except that where the attorney fee agreement amounts to a contingent fee based upon a percentage of the recovery it shall be subject to the following limitations:

(i) For cases where a petition has been filed, but the dispute over benefits has been resolved prior to trial, twenty-five (25) percent of the amount of benefits the claimant receives due to the efforts of the attorney.

(ii) For cases where a dispute over benefits has not been resolved prior to trial, thirty-three (33) percent of the amount of benefits claimant receives due to the efforts of the attorney.

(iii) For cases that are appealed to the Montana Supreme Court, forty (40) percent of the amount of benefits the claimant receives based upon an order of the Supreme Court.

(c) In its findings of fact and conclusions of law and judgment, the Court shall indicate the basis for and amount of claimant's attorney fees. (AUTH. and IMP. Sect. 2-4-201 MCA)

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

2.52.344 PETITION FOR NEW TRIAL OR RECONSIDERATION OF ATTORNEY FEE AWARD (1) After a trial, the Court will issue an order or will issue findings of fact and conclusions of law and judgment setting forth the Court's determination of the disputed issues. The parties to the dispute may consider the order or the judgment as a final decision of the Court for appeal purposes. A party to the dispute may request a new trial or a hearing to determine the reasonableness of attorney fees before the Court within 20 days after the order or judgment is filed and, if any party submits such a request, ~~for a new trial~~ the order or judgment issued by the Court shall not be considered a final decision of the Court for appeal purposes.

(2) If a request for a new trial is filed, the party requesting the new trial shall set forth specifically and in full detail the grounds upon which the party considers the order or judgment to be incorrect. If the Court denies the request for a new trial, the original order or judgment issued by the Court shall be considered the final decision of the Court as of the day the ~~new trial~~ request is denied. If a new trial is granted, the matter will be scheduled for trial pursuant to ARM 2.52.310. The matter will be determined by the testimony taken at the initial trial and at the new trial. After the new trial, the Court will issue an order or findings of fact and conclusions of law and judgment setting forth the Court's determination of the disputed issues.

(3) If a petition to determine the reasonableness of attorney fees is filed, the party objecting to the award shall have twenty (20) days from the date the judgment is filed within which to file a written petition with the Court requesting a hearing to determine the reasonableness of the Court's award. That petition shall set forth specific facts which the petitioner would prove if granted a hearing and which, if proven, would establish the unreasonableness of the Court's attorney fee award pursuant to the criteria set forth in Wight v. Hughes Livestock Co., Inc., Mont., 664 P.2d 303, 40 St. Rep. 696 (1983). General allegations to the effect that the award does not meet the criteria set forth in Wight, supra, shall not be sufficient. The Court shall review the petition and determine whether a prima facie basis for reconsideration is established. If not, the petition shall be denied and the original order or judgment issued by the Court shall be considered the final decision of the Court as of the day the request is denied. If so, a hearing shall be set and the petitioner shall be offered an opportunity to present evidence in support of its petition.

~~(3)~~ (4) If a new trial or a determination of the reasonableness of attorney fees is not requested or an appeal filed within the time allowed by law, the Court may order the file sent to the Division of Workers' Compensation, subject to any order the Court may make in the future.

(AUTH. and IMP. Sect. 2-4-201 MCA)

21-11/15/84

MAR Notice No. 2-2-139

4. The rationale for adopting the new rule and for amending ARM 2.52.344 is to set forth the manner in which the Court makes a determination of attorney fees and the procedures to be used in requesting a hearing concerning Attorney fees.

5. Interested parties may submit their data, views or arguments concerning these changes in writing to Clarice V. Beck, Hearing Examiner, Workers' Compensation Court, 5 South Last Chance Gulch, P.O. Box 537, Helena, Montana, 59624-0537 by December 13, 1984.

6. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Clarice V. Beck, address above, no later than December 13, 1984.

7. If the Court receives requests for a public hearing on the proposed amendment or proposed new rule, from 25 persons who are directly affected by the proposed amendment or ten percent of the population of the State of Montana; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The rule will affect each individual in the state. Notice of Hearing will be published in the Montana Administrative Register.



TIMOTHY W. REARDON  
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: November 5, 1984  
Date

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.22.801 con- ) OF 8.22.801 GENERAL REQUIRE-  
cerning general require- ) MENTS  
ments )  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 15, 1984, the Board of Horse Racing  
proposes to amend ARM 8.22.801.

2. The amendment as proposed will add a new sub-section  
(66) and will read as follows: (new matter underlined) (full  
text of rule is located at pages 8-679 through 8-685,  
Administrative Rules of Montana)

"8.22.801 GENERAL REQUIREMENTS (1) ...

(66) In all thoroughbred races where qualifying races  
are held to select finalists, the method of determining those  
finalists will be by order of finish in each qualifying heat."

Auth: 23-4-104, MCA Imp: 23-4-104, 202, MCA

3. The amendment was requested by the industry to  
determine the method of determining finalists in all  
thoroughbred races with qualifying trials.

4. Interested persons may submit their data, views or  
arguments concerning the proposed amendment in writing to the  
Board of Horse Racing, 1424 9th Avenue, Helena, Montana,  
59620-0407, no later than December 13, 1984.

5. If a person who is directly affected by the proposed  
amendment 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  
comments he has to the Board of Horse Racing, 1424 9th Avenue,  
Helena, Montana, 59620-0407, no later than December 13, 1984.

6. If the board receives requests for a public hearing  
on the proposed amendment from either 10% or 25, whichever is  
less, of those persons who are directly affected by the  
proposed amendment, from the Administrative Code Committee of  
the legislature, from a governmental agency or subdivision, or  
from an association having no less than 25 members who will be  
directly affected, a public hearing will be held at a later  
date. Notice of the hearing will be published in the Montana  
Administrative Register. Ten percent of those persons  
directly affected has been determined to be 400 based on the  
4000 licensees in Montana.

BOARD OF HORSE RACING  
HAROLD CERKE, CHAIRMAN

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 5, 1984.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE HARD-ROCK MINING IMPACT BOARD

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendments of 8.104.203 con-	)	OF 8.104.203 FORMAT OF PLAN,
cerning format of impact plans,	)	8.104.204 NOTIFICATION AND
8.104.204 concerning notifica-	)	SUBMISSION OF PLAN, 8.104.
tion and submission of a plan,	)	205 PROOF OF SUBMISSION OF
8.104.205 concerning proof of	)	PLAN TO AFFECTED COUNTIES,
submission of plans, 8.104.	)	8.104.210 EX PARTE COMMUNICA-
210 concerning ex parte com-	)	TIONS WITH BOARD MEMBERS, and
munications with board mem-	)	ADOPTION OF A NEW RULE ENTITLED
bers and staff, and proposed	)	FILING OF OBJECTIONS DURING
adoption of a new rule con-	)	EXTENSION PERIOD
cerning objections filed dur-	)	
ing 30-day extension of a	)	
review period.	)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 15, 1984, the Hard-Rock Mining Impact Board proposes to amend and adopt the above-stated rules pertaining to proceedings before the board.

2. The proposed amendment of 8.104.203 will add a new subsection (c), renumber the following subsections, and delete current subsection (e) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-3706, Administrative Rules of Montana)

"8.104.203 FORMAT OF PLAN

(1) ...

(2) The format of the plan shall contain the following elements:

(a) ...

(c) a list of the local government units which the developer believes might potentially be affected by the development;

~~(e)~~ (d) ...

~~(e) an index (to facilitate cross referencing among current conditions, impact analysis, proposed mitigation measures, financing methods and timing, and so forth);~~

(3) ..."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

3. The addition of new subsection (2)(c) formalizes the policy, adopted earlier by the board, that an impact plan should identify the formal participants in the impact plan review process. Current subsection (2)(e) has been found to be unnecessary and potentially cumbersome to the mineral developer.

4. The proposed amendment of 8.104.204 deletes the current subsection (1) and changes the number of copies to be submitted and will read as follows: (new matter underlined, deleted matter interlined)

8.104.204 NOTIFICATION AND SUBMISSION OF PLAN (1) A person (herein referred to as ~~the developer~~) required to prepare an impact plan by section 90-6-307 (1), MCA, shall notify the board and each affected county at least 90 days in advance of an anticipated submission of an impact plan-  
(2) The developer shall submit ~~10~~ 12 copies to the board and a sufficient number of copies to each affected county for distribution."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

5. The amendment is proposed to remove the requirement of subsection (1) which was unnecessary and impractical and to respond to the needs of the board and related state agencies for additional copies of the submitted impact plan.

6. The proposed amendment of 8.104.205 will read as follows: (new matter underlined, deleted matter interlined)

"8.104.205 PROOF OF SUBMISSION OF PLAN TO AFFECTED COUNTIES (1) The board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

7. The change is proposed to allow greater flexibility than does the present rule and will prevent the inaction of one party from frustrating the plan review process.

8. The proposed amendment of 8.104.210 will read as follows: (new matter underlined, deleted matter interlined)

"8.104.210 EX PARTE COMMUNICATIONS WITH BOARD MEMBERS (1) No representative of any party to the plan may communicate with any board member outside the context of a public meeting on any issue related to the plan until the plan has received final approval.

(2) If requested to do so by any party to the plan, the staff of the board may be allowed to provide information during either the 90 day review period or the 30 day negotiation period as long as a written record of this communication is kept. During the 90-day review period and the 30-day negotiation period the board's staff may not communicate with any party concerning the substance of a plan. However, the staff may at any time either on its own

initiative or in response to a request, provide information concerning the technical compliance of a plan with statutes and board rules and the plan review process provided that the information does not relate to the substance or merits of a particular plan. The staff shall maintain a log of any such contact."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

9. The change recognizes the need for greater staff flexibility in implementing the Hard-Rock Mining Impact Act than is permitted under the current rule but protects against communications which might compromise the quasi-judicial function of the board.

10. The proposed new rule will read as follows:

"1. FILING OF OBJECTIONS DURING EXTENSION PERIOD (1)

Only those affected local government units which have requested a 30-day extension of the initial review period pursuant to section 90-6-307 (4), MCA, may file objections to the plan during this extension. However, if an objection filed during this extension relates to the interests of a government unit which did not request an extension, that unit will be allowed to comment on the objection, and any such comment may be considered by the board in subsequent proceedings concerning the objection."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

11. The new rule was made necessary by a 1983 amendment of 90-6-307, MCA, authorizing the extension of the plan review period. The proposed new rule clarifies the rights of affected parties during such an extension.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Montana Hard-Rock Mining Impact Board, Department of Commerce, Community Development, Room C-211, Cogswell Building, Helena, Montana 59620, no later than December 13, 1984.

13. If a person who is directly affected by the proposed amendments and adoption 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 comments he has to the Montana Hard-Rock Mining Impact Board, Department of Commerce, Community Development Division, Room C-211, Cogswell Building, Helena, Montana, 59620, no later than December 13, 1984.

14. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association

having no fewer than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the total population of the state.

HARD-ROCK MINING IMPACT  
BOARD  
KOEHLER STOUT, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 5, 1984.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA BOARD OF HOUSING

In the matter of the publishing of a )  
statement of policies and assessment )  
of prior compliance by the Montana )  
Board of Housing with respect to )  
housing, development, and low income )  
housing assistance which such board )  
will follow for issuing qualified )  
mortgage bonds and mortgage credit )  
certificates. )

NOTICE OF  
PUBLIC HEARING

TO: All interested persons.

1. On December 6, 1984, at 10 o'clock a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts Street, Helena, Montana, to consider the publishing of a statement of policies and assessment of prior compliance by the Montana Board of Housing (the "board") with respect to housing, development, and low income housing assistance which the board will follow for issuing qualified mortgage bonds and mortgage credit certificates.

2. The proposed statement of policies does not replace or modify any section currently found in the Administrative Rules of Montana.

3. Recent amendments of Section 103A of the Internal Revenue Code of 1954 provide in substance that the Governor, as the elected representative of the board, shall publish and file with the Secretary of the U.S. Treasury a report which includes (a) a statement of the policies of the board with respect to housing development and low-income housing assistance which the board is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and (b) an assessment of the board's compliance during the preceding 1-year period preceding the date of the report with (I) the statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the Governor's previous report, if any, and (II) the intent of Congress that state and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

4. The board is proposing to publish a statement of policies and assessment of prior compliance to comply with the United States Tax Reform Act of 1984, Public Law No. 98-369.

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 Jay F. McLeod, the administrator of the Montana Board of

Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than December 13, 1984.

6. Jay F. McLeod, the administrator of the Montana Board of Housing, has been designated to preside over and conduct the hearing.

7. The authority of the board to make the proposed statement of policies is based on section 90-6-104, MCA, and the statement of policies implements section 90-6-106, MCA.

MONTANA BOARD OF HOUSING

By: 

Jay F. McLeod, Administrator

Certified to the Secretary of State November 2, 1984.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- ) NOTICE OF PUBLIC HEARING on  
MENT of Rule 42.16.105 relat-) the Proposed Amendment of  
ing to penalties. ) Rule 42.16.105 relating to  
penalties.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the amendment of rule 42.16.105 relating to penalties.

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

42.16.105. PENALTIES FOR FAILURE TO FILE RETURN, PAY THE TAX, OR PAY A DEFICIENCY (1) Effective with taxable years ending on and after December 31, 1974:

(a) the penalty for failure to file a return by its due date, without intent to evade the tax purposely or knowingly failing to do so, is 5% of any balance of tax unpaid with respect to said return as of its due date, but in no event shall the penalty be less than \$5. The due date of a return is determined with regard to an extension granted for the filing thereof. If the taxpayer shows to the satisfaction of the department that the failure to file on time was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late filing.

(b) the penalty for failure to pay the tax by its due date, without intent to evade the tax purposely or knowingly failing to do so, is 10% of the tax unpaid but not less than \$5. The due date of the tax is determined with regard to an extension of time granted for the filing of the return with respect to which the tax is due. If the taxpayer shows to the satisfaction of the department that the failure was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late payment of the tax.

(2) The penalty for purposely or knowingly failing to file a return or to pay the tax by the due date, is 25% of the amount of the unpaid tax unpaid, but not less than \$25.

(a) "Purposely or knowingly failing to file a return or pay the tax by the due date" includes, but is not limited to:

(i) habitually failing to file a return or to pay the tax due unless the taxpayer can establish that the failure was not done purposely or knowingly; or

(ii) an attempt to evade or defeat the tax.

(b) "Habitually" means more than once in a 3-year period

subsequent to notification by the department of a prior failure to file a return or to pay the tax due.

(3) Remains the same.

AUTH: 15-30-305 MCA; IMP: 15-30-321 and 15-30-323 MCA.

3. The Department proposes to amend rule 42.16.105 because the statute and present rules are not clear on the circumstances requiring the payment of the 25% penalty and 12% interest. This amendment is proposed as a clarification.

An existing policy of assessing the 25% or \$25 minimum penalty against returns or late paid taxes when the taxpayer is habitually late is disseminated through this amended rule. The amendment is also proposed so that taxpayers will know the standards for a habitual offender and can choose to file returns and pay the tax on a timely basis that avoids the consequences of being an habitual offender.

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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment is based on § 15-30-305, MCA. The rule implements §§ 15-30-321 and 15-30-323, MCA.

*Ellen Feaver*  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION  
of NEW RULE I (42.16.133) )  
and II (42.16.134) relating )  
to the payment of interest on )  
refunds. )

NOTICE OF PUBLIC HEARING on  
the proposed adoption of NEW  
RULES I (42.16.133) and II  
(42.16.134) relating to the  
payment of interest on  
refunds.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules I (42.16.133) and II (42.16.134) relating to the payment of interest on refunds.
2. The rules as proposed to be adopted provide as follows:

NEW RULE I (42.16.133) CIRCUMSTANCES WHEN INTEREST IS NOT PAID ON REFUNDS Interest will not be paid on overpayments if the overpayment results from the carryback of the investment tax credit.

AUTH: 15-30-305 MCA; IMP: 15-30-149 MCA.

NEW RULE II (42.16.134) CIRCUMSTANCES WHEN INTEREST IS PAID ON REFUNDS Interest will be allowed on overpayments if the overpayment refunded results from the taxpayer's failure to claim an estimated tax payment when filing the tax return and the overpayment is not refunded within 6 months from the date the return is due or the date the return is filed, whichever is later.

AUTH: 15-30-305 MCA; IMP: 15-30-149 MCA.

3. The Department proposes to adopt the new rules for the following reasons:

NEW RULE I (42.16.133) - This rule is intended to clarify § 15-30-149, MCA. The Montana statutes do not allow interest on refunds resulting from carryback of net operating loss. The overpayment resulting from an investment tax credit does not occur until the taxpayer purchases an asset eligible for investment tax credit. If we were to allow interest on an investment tax credit carryback refund, we would be allowing interest to accrue prior to the event which created the overpayment. This would be inconsistent with other carryback provisions such as net operating loss carrybacks provided in § 15-30-149(4)(b), MCA. The Internal Revenue Service does not allow interest on overpayments resulting from investment tax credit carrybacks.

NEW RULE II (42.16.134) - Prior to this proposed rule, the Department had a policy of denying interest on refunds resulting from the taxpayer's failure to claim an estimated tax payment. This rule is proposed to change the policy so all taxpayers

including those forgetting to claim estimated tax payments will receive interest on overpayments not refunded within 6 months of the date their return is filed or due.


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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoptions is based on § 15-30-305, MCA. The rules implement § 15-30-149, MCA.



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ELLEN FLAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- )  
MENT of Rule 42.17.103 relat- )  
ing to wages; the AMENDMENT )  
of Rule 42.17.118 relating to )  
the forms to file after )  
termination of wage payments; )  
and the REPEAL of Rule )  
42.17.119 relating to closing )  
of withholding accounts. )

NOTICE OF PUBLIC HEARING on  
the proposed AMENDMENT of Rule  
42.17.103 relating to wages;  
the AMENDMENT of Rule  
42.17.118 relating to the  
forms to file after termina-  
tion of wage payments; and the  
REPEAL of Rule 42.17.119 re-  
lating to closing of with-  
holding accounts.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the amendment of rule 42.17.103 relating to wages; the amendment of rule 42.17.118 relating to the forms to file after termination of wage payments; and the repeal of rule 42.17.119 relating to closing of withholding accounts.

2. Rule 42.17.119 as proposed to be repealed may be found at page 42-1714 of the Administrative Rules of Montana.

3. The rules as proposed to be amended provide as follows:

42.17.103 WAGES (1) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer, including the fair value of all remuneration paid in any medium or form other than money. Thus, salaries, wages, bonuses, fees, commissions, and other payments are wages subject to withholding if paid as compensation for services rendered by an employee for his employer. Wages do not lose their identity even though payment may be deferred.

(2) The name by which compensation is designated is immaterial.

(3) Employee contributions to qualifying annuity contracts under IRC Sec. 403(b), or individual retirement accounts, pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans where the payments are not otherwise considered wages, an IRA, or a commercial annuity contract (whether or not the contract was purchased under an employer's plan for employees) are exempt from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes. Distributions from such contributions to the employee must be reported to the department as provided in ARM 42.15.311.

(4) Remains the same.

(5) Withholding is required on designated distributions to the employee from contributions under subsection (3) as if

distribution were wages and must be reported to the department as provided in ARM 42.17.116.

AUTH: 15-30-305 MCA; IMP: 15-30-201 MCA.

42.17.118 FORMS TO FILE AFTER TERMINATION OF WAGE PAYMENTS  
The following statements must be filed with the Department of Revenue, Helena, Montana, within 30 days after the termination of wage payments:

(1) Form MW-5, the quarterly report for the final quarter in which wage payments were made (the completed form must contain a cancellation date);

(2) and (3) remain the same.

AUTH: 15-30-305 MCA; IMP: 15-30-209 MCA.

4. Rule 42.17.103 is proposed to be amended because deferred compensation is not subject to Montana income tax when deferred. The compensation is taxed when received. This procedure is the same as the federal income tax treatment of deferred compensation.

Federal withholding on deferred compensation occurs upon the taxpayer's receipt of the compensation. The current Montana rules for withholding on deferred compensation are unclear.

The amendment is proposed to ensure withholding is collected for the same time period the income tax is due, and that the timing of state withholding coincides with federal withholding.

The Department proposes to repeal rule 42.17.119 because it no longer furnishes special forms used to terminate an employer withholding account. The MW-5 quarterly report form is used to cancel or terminate an account. Necessary language has been added to ARM 42.17.118 to provide for termination of the account.

Rule 42.17.118 is proposed to be amended in order to add language which will provide for the termination of an account thereby avoiding additional paperwork or unnecessary communication.


5. 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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

6. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments and repeal is based on § 15-30-305, MCA. The rules implement §§ 15-20-201 and 15-30-209, MCA.

  
\_\_\_\_\_  
ELLEN FEATHER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- )	NOTICE OF PUBLIC HEARING ON
MENT of Rule 42.15.504 relat-) the PROPOSED AMENDMENT of	
ing to the investment tax ) Rule 42.15.504 relating to the	
credit. )	investment tax credit.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the amendment of rule 42.15.504 relating to the investment tax credit.

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

42.15.504 INVESTMENT CREDIT (1), (2), (3), and (4) remain the same.

(5) When the tax liability for a tax year is reduced due to a net operating loss carryback, which results in additional investment tax credit being available, the excess investment tax credit must be carried back 3 years before it can be carried forward. If the investment tax credit carried back results in an overpayment, a refund cannot be issued by the department if the overpaid tax year is beyond the time period provided in 15-30-149, MCA.

AUTH: 15-30-305 MCA; IMP: 15-30-162 MCA.

3. This proposed amendment to rule 42.15.504 implements a policy of the Department and is also intended as a clarification of § 15-30-162, MCA. Section 15-30-162, MCA, refers to IRC § 46(b) for carryovers and carrybacks, but there is no specific reference in IRC § 46(b) indicating the effect a net operating loss has on the release of investment tax credit. Since the net operating loss reference is not in the Internal Revenue Code section referenced in our statute and the Montana statute of limitations does not specify an exception for investment tax credit, a tax year beyond the MCA statute of limitations is a closed year for amended Montana returns purposes.

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:

Ann Fenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment is based on § 15-30-305, MCA. The rule implements § 15-30-162, MCA.

  
\_\_\_\_\_  
ELLEN FAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of NEW RULE I (42.15.426) )	the ADOPTION of NEW RULE I
relating to the use of )	(42.15.426) relating to the
Montana adjusted gross income)	use of Montana adjusted gross
when calculating itemized )	income when calculating
deductions. )	itemized deductions.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rule I (42.15.426) relating to the use of Montana adjusted gross income when calculating itemized deductions.

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

NEW RULE I (42.15.426) MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS When the deductions allowed under 15-30-121, MCA, are limited to a percentage of adjusted gross income by reference to the internal revenue code, Montana adjusted gross income must be used when calculating the deductions limitation for the Montana return.  
AUTH: 15-30-305 MCA; IMP: 15-30-121 MCA.

3. The Department proposes to adopt new rule I (42.15.426) because the statutes are not clear as to whether the federal adjusted gross income or the Montana adjusted gross income is to be used when calculating itemized deductions.

The following example illustrates what is actually occurring. This rule will establish an equal and reasonable method for calculating itemized deductions for all taxpayers.

Example: Taxpayer has a federal adjusted gross income of \$20,000 of which \$10,000 is United States bond interest. The taxpayer's Montana adjusted gross income would be \$10,000 (\$20,000 - \$10,000 nontaxable interest). When calculating contributions to a church, where the maximum is 50% of adjusted gross, a taxpayer might choose to use the federal adjusted gross income. When calculating a medical deduction on the same return, the taxpayer might choose instead to use Montana adjusted gross income because their medical deductions have to exceed 5% of adjusted gross.

In the example, a taxpayer would be inconsistently selecting the income base for different provisions of the tax law. Because the tax being paid is the Montana state tax, the appropriate income base for calculating percentage limits for itemized deductions is Montana adjusted gross income.

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:



Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Pozman-Moss, Agency Legal Services, Department of Justice has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and the rule implements § 15-30-121, MCA.

*Ellen Feaver*  
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ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)  
of NEW RULE I (42.15.324) )  
relating to the failure to )  
furnish requested information) )  
on returns. )

NOTICE OF PUBLIC HEARING on  
the ADOPTION of NEW RULE I  
(42.15.324) relating to the  
failure to furnish requested  
information on returns.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rule I (42.15.324) relating to the failure to furnish requested information on returns.

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

NEW RULE I (42.15.324) FAILURE TO FURNISH REQUESTED INFORMATION (1) The Department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.

(2) If, after 30 days from the date of the second request for information, the taxpayer has not responded and the amounts still remain unverified, they will be disallowed.

(3) Failure to supply the information requested will result in the assessment of tax, interest, and penalty as provided at 15-30-145, MCA.

AUTH: 15-30-305 MCA; IMP: 15-30-145 MCA.

3. The Department proposes to adopt new rule I (42.15.324) because the department is authorized by law to revise returns which in its opinion are incorrect. To determine the correctness of a return, the Department may examine the taxpayer's records and other information. The current rules are unclear concerning actions to be taken if requested records and other information are not provided. New rule I (42.15.324) is proposed in order to inform taxpayers of the revisions the Department will make to their return when the requested information is not provided.

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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

21-11/15/84

MAR Notice No. 42-2-274

6. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and the rule implements § 15-30-145, MCA.

*Ellen Feaver*

ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE PROPOSED
of NEW RULE I (42.15.323) )	ADOPTION of NEW RULE I
relating to elderly home- )	(42.15.323) relating to
owner credit returns. )	elderly homeowner credit
	returns.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1984, the Department proposes to adopt new rule I (42.15.323) relating to elderly homeowner credit returns.

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

NEW RULE I (42.16.323) HANDLING OF ELDERLY HOMEOWNER CREDIT RETURNS Filing date for elderly credit returns:

(1) Returns claiming the elderly homeowner credit, when filed apart from the income tax return, must be submitted on or before April 15 of the year following the year for which credit is sought. When such a claim is filed late, a letter which states the reason for being late must be attached. If there is good reason for the late filing, the return will be accepted by the department. Claims filed more than 5 years late will not be accepted.

(2) Returns claiming the elderly homeowner credit, when filed with or when amending an income tax return, are considered a part of the income tax return and are subject to the same statute of limitations that applies to income tax returns.

AUTH: 15-30-305 MCA; IMP: 15-30-174 MCA.

3. The Department proposes to adopt the new rule I (42.15.323) in order to clarify how elderly homeowner credit returns are handled by the department if not filed by April 15 each year.

For example, if a taxpayer files an income tax return and fails to include the elderly credit, he can file an amended return claiming the credit. However, if the taxpayer is not required to file a return, but is eligible for the elderly credit, the statutes state, the credit form is due by April 15th of the following year. The statute does not state what will happen if the credit form is not received by April 15th.

This proposed new rule will clarify this situation for the taxpayer by setting forth the various filing date options for Elderly Homeowner Credit returns.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

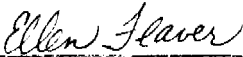
Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and 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 Ann Kenny at the above address no later than December 14, 1984.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association have no 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. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and the rule implements § 15-30-174, MCA.

  
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ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)  
of NEW RULE I (42.15.114) )  
relating to the tax status of)  
federal obligations. )

NOTICE OF PUBLIC HEARING on  
the proposed adoption of NEW  
RULE I (42.15.114) relating to  
the tax status of federal  
obligations.

TO: All Interested Persons:

1. On December 6, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rule I (42.15.114) relating to the tax status of federal obligations.

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

NEW RULE I (42.15.114) TAX STATUS OF FEDERAL OBLIGATIONS

(1) Pursuant to 15-30-111, MCA, interest income earned from obligations of the United States government is exempt from Montana income tax.

(2) For Montana tax purposes, an obligation of the United States must meet the following requirements:

(a) be issued by a governmental agency through its exercise of power given to it by congress;

(b) must be borrowed on the credit of the United States which will pay specified sums at specified times; and

(c) the money borrowed must be for an essential governmental function.

(3) Effective January 1, 1984, interest earned on Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) securities are no longer exempt from taxation.

AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

3. The Department proposes to adopt new rule I (42.15.114) because presently there is no rule which outlines the requirement making an obligation of the United States Government tax exempt for Montana purposes. This rule is necessary because of a recent court decision, Farmers and Traders State Bank v. Johnson, 458 N.E.2d 1365 (1984), which states that GNMA and FNMA securities are not exempt from state taxation. Previously, we have been exempting them from taxation.

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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than December 14, 1984.

5. Barbara Rozeman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA. The rule implements § 15-30-111, MCA.

  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amend- ) NOTICE OF PROPOSED AMENDMENT OF  
ment of rule pertaining to ) RULE 1.2.419 FILING, COMPILING,  
scheduled dates - Montana ) PRINTER PICKUP AND PUBLICATION  
Administrative Register. ) SCHEDULE FOR THE MONTANA  
ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 31, 1984, the Secretary of State proposes to amend the rule pertaining to the scheduled dates for the Montana Administrative Register.

2. The rule as proposed to be amended provides as follows:  
1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION  
SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

Filing	19845 Schedule Compiling	Printer Pickup	Publication
January 37	January 48	January 59	January 1217
January 1621	January 1722	January 1823	January 2631
February 64	February 75	February 86	February 1614
February 2115	February 2219	February 2320	February 2928
March 54	March 65	March 76	March 1514
March 1918	March 2019	March 2120	March 2928
April 21	April 32	April 43	April 1211
April 1615	April 1716	April 1817	April 2625
May 76	May 87	May 98	May 1716
May 2120	May 2221	May 2322	May 3130
June 43	June 54	June 65	June 1413
June 1817	June 1918	June 2019	June 2827
July 21	July 32	July 53	July 1211
July 1615	July 1716	July 1817	July 2625
August 65	August 76	August 87	August 1615
August 2019	August 2120	August 2221	August 3029
September 43	September 54	September 65	September 1312
September 1716	September 1817	September 1918	September 2726
October 17	October 28	October 39	October 1117
October 1521	October 1622	October 1723	October 2531
November 54	November 75	November 86	November 1514
November 1918	November 2019	November 2120	November 29
December 32	December 43	December 54	December 1312
December 1716	December 1817	December 1918	December 2726



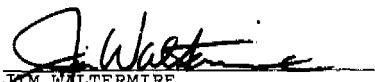
(2) All material to be published must be submitted by 5:00 p. m., ~~on~~ on the scheduled filing date. All material submitted after the scheduled filing date will not be published until the next scheduled filing date.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1985.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Kathy Lubke, Office of the Secretary of State, State Capitol, Helena, Montana, 59620, no later than December 13, 1984.

  
JIM WALTERMIRE  
Secretary of State

Dated this 1st day of November, 1984.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.12.513	)	THE PROPOSED AMENDMENT OF
pertaining to reimbursement	)	RULE 46.12.513 PERTAINING
for swing-bed hospitals;	)	TO REIMBURSEMENT FOR SWING-
medical assistance	)	BED HOSPITALS; MEDICAL
	)	ASSISTANCE

TO: All Interested Persons

1. On December 5, 1984, at 9:30 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 proposed amendment of Rule 46.12.513 pertaining to reimbursement for swing-bed hospitals; medical assistance.

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

46.12.513 SWING-BED HOSPITALS, REIMBURSEMENT (1) Reimbursement for hospitals that provide swing-bed services will be based on the current medicare swing-bed rate, ~~or, for combined facilities, at the facility's current medicare rate for nursing care, whichever rate is lower.~~

Subsections (2) through (5) remain the same.


AUTH: Sec. 53-6-113 and 53-2-201(h) MCA

IMP: Sec. 53-6-111, 53-6-141 and 53-2-201(a) MCA

3. On July 1, 1984, the Medicaid program adopted a rule which provided reimbursement for swing-bed services. The rule provided that reimbursement for hospitals that provide swing-bed services will be based on the current Medicare swing-bed rule or, for combined facilities, at the facility's current Medicaid rate for nursing care, whichever rate is lower. Subsequent to the adoption of this rule, the department submitted a state plan amendment to incorporate the swing bed rule into the Montana Medicaid program. The department received a letter from HCFA on September 12, 1984, indicating that the language in the rule concerning the lower of the Medicare swing-bed rate or the facility's current Medicaid rate was unacceptable. It was HCFA's interpretation that current federal regulations prohibited states from paying anything but the current Medicare swing-bed rate. The rationale behind this rule change is to insure that the state is in compliance with all of the federal requirements regarding swing-bed services and to protect against the potential loss of federal funding.

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 59604, no later than December 13, 1984.

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

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State November 5, 1984.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the	)	NOTICE OF AMENDMENTS OF 8.56.
amendments of 8.56.402 con-	)	402 APPLICATIONS, 8.56.408,
cerning applications, 8.56.	)	DUPLICATE OR LOST LICENSES, 8.
408 concerning duplicate or	)	56.410 COMPLAINT PROCESS;
lost licenses, 8.56.410 con-	)	TRANSER & AMENDMENT OF 8.56.412
cerning complaint process;	)	TEMPORARY PERMITS now 8.56.604;
proposed transfer to a new	)	REPEAL OF 8.56.401 DEFINITIONS,
sub-chapter and amendment of	)	8.56.405 PERMIT EXAMINATIONS,
8.56.412 concerning temporary	)	8.56.406 PERMITS, and ADOP-
permits; proposed repeal of	)	TION OF NEW RULES UNDER A NEW
rules 8.56.401 concerning de-	)	SUB-CHAPTER (6) FOR PERMITS
initions, 8.56.405 concern-	)	8.56.601 DEFINITIONS, 8.56.602
ing permit examinations, 8.	)	PERMIT APPLICATIONS AS PER
8.56.406 concerning permits;	)	SECTION 37-14-306 (1), MCA,
and proposed adoption of new	)	8.56.603 REQUIREMENTS FOR
rules under a new sub-chapter	)	APPROVAL OF A PHYSICIAN
for permits - rules concerning	)	SPECIALIZING IN RADIOLOGY
definition of a regional hard-	)	(interpretive rule), 8.56.
ship, permit application under	)	604 VERIFICATION OF ADEQUATE
section 37-14-306 (1), MCA,	)	EVIDENCE THAT THE TEMPORARY
permit restrictions, interpre-	)	PERMIT APPLICANT CAN PERFORM
tive rules setting requirements	)	X-RAY EXAMINATIONS WITHOUT
for approval of physicians	)	ENDANGERING THE PUBLIC (inter-
specializing in radiology,	)	pretive rule), 8.56.605 PERMIT
and verification of evidence	)	RESTRICTIONS, and ADOPTION OF
that the temporary permit	)	A NEW RULE UNDER SUB-CHAPTER 8
applicant can perform x-ray	)	UNETHICAL CONDUCT RULES, 8.56.
examinations without endanger-	)	801 UNETHICAL CONDUCT
ing the public health and	)	
safety and adoption of a new	)	
sub-chapter for unethical	)	
conduct	)	

TO: All Interested Persons.

1. On September 13, 1984, a notice of public hearing was published to consider the above-stated amendments, transfers, repeals and adoptions, at pages 1210-1215, 1984 Montana Administrative Register, issue number 17.

2. On Thursday, October 4, 1984, at 10:00 a.m., a public hearing was held in the upstairs conference room of the Department of Commerce Building, 1424 9th Avenue, Helena, Montana.

In addition to staff and board member, Adrian Howe, 11 persons attended the hearing. From the testimony offered at the hearing it appeared that the participants' primary concern was with the possible termination of authority of permit holders of long standing to practice and the hardship of requiring certain practitioners in that class to further their formal educations. Grandfathering was a common suggestion for treatment of the problem.

Although suggestions from participants were constructive and well-intended, it was the opinion of the presiding officer that measures such as grandfathering, continuing education and authorizing professionals other than radiologists to evaluate permit applicants would be both a substantial difference from proposed rules as noticed and engrafting additional, noncontradictory requirements not envisioned by the legislature contrary to the Supreme Court's opinion in Bell v. Department, 182 Mont. 21, and contrary to the spirit of the Attorney General's opinion which gave rise to these proceedings.

No comment was received on subjects of duplication of lost licenses, the complaint process or unethical conduct.

Four letters of comment were received. Two were in support of the proposed changes. Two letters expressed the same concerns with regard to permit holders as were expressed at the hearing.

Because the hardship envisioned during the transitional period until legislative action may not be as real as apprehended, the advice of the presiding officer, and the directives of the Attorney General's opinion, the board is amending, transferring, repealing and adopting the rules as proposed, with one exception. Rule 8.56.604 will be adopted with the following change in response to a phone call from the legal counsel of the Administrative Code Committee, which stated the original wording appeared to be in conflict with the Attorney General's opinion. (New matter underlined, deleted matter interlined)

"8.56.604 VERIFICATION OF ADEQUATE EVIDENCE THAT THE TEMPORARY PERMIT APPLICANT CAN PERFORM X-RAY EXAMINATIONS WITHOUT ENDANGERING THE PUBLIC" (1) Adequate evidence that the person is capable of performing high quality x-ray examinations without danger to the public health and safety will be evidence documentation of knowledge in the following areas: radiation protection and radiobiology, x-ray physics, anatomy, physiology, positioning, radiographic technique, darkroom procedures, and film critique. Verification of adequate knowledge will be successful answers to questions relating to those areas through an oral or written examination conducted by the board."

3. No other comments or testimony were received.

BOARD OF RADIOLOGIC  
TECHNOLOGISTS  
LON ROMINGER, CHAIRMAN

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 5, 1984.

21-11/15/84

Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL )	NOTICE OF REPEAL of Rule
of Rule 42.27.211, relating )	42.27.211 relating to non-
to nonexemption from the )	exemption from the gasoline
gasoline tax. )	tax.

TO: All Interested Persons:

1. On September 13, 1984, the Department of Revenue published notice of the proposed repeal of rule 42.27.211 relating to nonexemption from the gasoline tax at pages 1341 and 1342 of the 1984 Montana Administrative Register, issue number 17.
2. The Department has repealed rule 42.27.211 as proposed.
3. No comments or testimony were received.
4. The authority for the rule is § 15-70-104, MCA. The rule implements § 15-70-202, MCA.

IN THE MATTER OF THE AMEND- )	NOTICE OF AMENDMENT of Rules
MENT of Rules 42.27.102 and )	42.27.102 and 42.27.103 re-
42.27.103 relating to gaso- )	lating to gasoline distribu-
line distributor's bonds and )	tor's bonds and statements.
statements. )	

TO: All Interested Persons:

1. On September 13, 1984, the Department of Revenue published notice of the proposed amendment of rules 42.27.102 and 42.27.103 relating to gasoline distributor's bonds and statements at pages 1343 and 1344 of the 1984 Montana Administrative Register, issue number 17.
2. The Department has amended rules 42.27.102 and 42.27.103 as proposed.
3. No comments or testimony were received.
4. The authority for the rules is § 15-70-104, MCA. The rules implement §§ 15-70-202 and 15-70-205, MCA.

IN THE MATTER OF THE AMEND- )	NOTICE OF AMENDMENT of Rules
MENT of Rules 42.28.402, )	42.28.402, 42.28.403,
42.28.403, 42.28.404, and )	42.28.404, and 42.28.405 re-
42.28.405 relating to special )	lating to special fuel
fuel dealers. )	dealers.

TO: All Interested Persons:

1. On September 13, 1984, the Department of Revenue published notice of the proposed amendment of rules 42.28.402, 42.28.403, 42.28.404, and 42.28.405 relating to special fuel dealers at pages 1345 through 1347 of the 1984 Montana Administrative Register, issue number 17.
2. The Department has amended rules 42.28.402, 42.28.403, 42.28.404, and 42.28.405 as proposed.

3. No comments or testimony were received.

4. The authority for the rules is § 15-70-104, MCA. The rules implement §§ 15-70-323, 15-70-324, and 15-70-325, MCA.

IN THE MATTER OF THE AMEND-	)	NOTICE OF AMENDMENT of Rules
MENT of Rules 42.28.105 and )		42.28.105 and 42.28.121 re-
42.28.121 relating to special)		lating to special fuel user
fuel user tax. )		tax.

TO: All Interested Persons:

1. On September 13, 1984, the Department of Revenue published notice of the proposed amendment of rules 42.28.105 and 42.28.121 relating to special fuel user tax at pages 1348 and 1349 of the 1984 Montana Administrative Register, issue number 17.

2. The Department has amended rules 42.28.105 and 42.28.121 as proposed.

3. No comments or testimony were received.

4. The authority for the rules is § 15-70-104, MCA. The rules implement §§ 15-70-301, 15-70-322, 15-70-325, and 15-70-327, MCA.

IN THE MATTER OF THE AMEND-	)	NOTICE OF AMENDMENT of Rules
MENT of Rules 42.28.301, )		42.28.301, 42.28.302,
42.28.302, 42.28.312, )		42.28.312, 42.28.313,
42.28.313, 42.28.321, and )		42.28.321, and 42.28.324 re-
42.28.324 relating to special)		lating to special fuel
fuel permits. )		permits.


TO: All Interested Persons:

1. On September 13, 1984, the Department of Revenue published notice of the proposed amendment of rules 42.28.301, 42.28.302, 42.28.312, 42.28.313, 42.28.321, and 42.28.324 relating to special fuel permits at pages 1350 through 1354 of the 1984 Montana Administrative Register, issue number 17.

2. The Department has amended rules 42.28.301, 42.28.302, 42.28.312, 42.28.313, 42.28.321, and 42.28.324 as proposed.

3. No comments or testimony were received.

4. The authority for the rules is § 15-70-104, MCA. The rules implement §§ 15-70-302, 15-70-303, 15-70-304, 15-70-306, 15-70-323, and 15-70-324, MCA.

  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 11/05/84

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.2.201,	)	RULES 46.2.201, 46.2.202,
46.2.202, 46.2.206,	)	46.2.206, 46.2.209,
46.2.209, 46.2.210 and	)	46.2.210 AND 46.2.211 PER-
46.2.211 pertaining to	)	TAINING TO OVERALL DEPART-
overall departmental rules,	)	MENTAL RULES, DEFINITIONS
Definitions and fair	)	AND FAIR HEARINGS
hearings	)	

TO: All Interested Persons

1. On September 13, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.2.201, 46.2.202, 46.2.206, 46.2.209, 46.2.210 and 46.2.211 pertaining to overall departmental rules, definitions and fair hearings at page 1358 of the 1984 Montana Administrative Register, issue number 17.

2. The department has amended Rules 46.2.201, 46.2.206, 46.2.209, 46.2.210 and 46.2.211 as proposed.

3. The department has amended Rule 46.2.202 as proposed with the following changes:

46.2.202 OPPORTUNITY FOR HEARING Subsections (1) through (1)(d) remain the same as proposed.

(2) Providers contesting actions by the department to deny, terminate or fail to renew certification or licensure, shall be granted the right to hearing as provided in this chapter.

(a) A request for a hearing from a provider must be submitted in writing within 30 days of receipt THE DATE of notice of the department's adverse action.

Subsection (3) remains the same as proposed.

(4) Medical assistance providers contesting actions by the department to withhold or suspend payments or sanction a provider in accordance with ARM 46.12.400 et. seq. shall be granted the right to hearing. IF A WRITTEN REQUEST FOR A HEARING IS SUBMITTED WITHIN 30 DAYS OF THE DATE OF NOTICE OF THE DEPARTMENT'S ACTION.

Subsection (5) remains the same as proposed.

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-4-111, 53-6-111 and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112 and 53-6-111 MCA

4. The department has thoroughly considered all verbal and written commentary received.

Montana Administrative Register

21-11/15/84



COMMENT: One comment suggested that ARM 46.2.202(1)(b) be amended to state that the local office shall assist a claimant who needs and/or seeks help in requesting a hearing.

RESPONSE: The rule has not been amended to include this suggestion. It would place an undue burden on local offices if we required them to make a subjective judgement that some who do not seek assistance to request a hearing may in fact need such assistance. Furthermore, we have no means of forcing a recipient to accept our assistance even if the local office decided that it might be needed.

COMMENT: A suggestion was made that ARM 46.2.211(2) be amended to allow 20 days rather than 15 days to file a request for a board review of a fair hearing decision.

RESPONSE: The proposed rule increases the time allowed for appeal from 10 days to 15 days. To extend the time further would cause difficulties in meeting federal requirements that decisions be issued in a timely manner.

COMMENT: A request was made that oral fair hearing requests should continue to be accepted from recipients for all programs.

RESPONSE: The rule requiring written request for fair hearings was proposed to ensure compliance with federal regulation requiring all appeals be handled within 90 days. It is very difficult to adhere to this regulation in cases when oral requests are accepted. Any person needing assistance to make a written request for a hearing can obtain that assistance in the local welfare office and every notification of an adverse action includes an easy-to-complete section to request a fair hearing. The rule has not been changed to allow for oral requests for all programs.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State \_\_\_\_\_ November 5 \_\_\_\_\_, 1984.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.5.604,	)	RULES 46.5.604, 46.5.606,
46.5.606, 46.5.609 and	)	46.5.609 and 46.5.672
46.5.672 pertaining to	)	PERTAINING TO LICENSES,
licenses, license revocation	)	LICENSE REVOCATION AND
and denial, and confidenti-	)	DENIAL, AND CONFIDENTIALITY
ality of records and	)	OF RECORDS AND INFORMATION
information	)	

TO: All Interested Persons

1. On September 13, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.5.604, 46.5.606, 46.5.609 and 46.5.672 pertaining to licenses, license revocation and denial, and confidentiality of records and information at page 1364 of the 1984 Montana Administrative Register, issue number 17.
2. The department has amended the rules as proposed.
3. No comments or testimony were received.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.5.904,	)	RULES 46.5.904, 46.5.905
46.5.905 and 46.10.404 per-	)	AND 46.10.404 PERTAINING TO
taining to day care for	)	DAY CARE FOR CHILDREN OF
children of recipients in	)	RECIPIENTS IN TRAINING OR
training or in need of	)	IN NEED OF PROTECTIVE
protective services.	)	SERVICES

TO: All Interested Persons

1. On September 13, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.5.904, 46.5.905 and 46.10.404 pertaining to day care for children of recipients in training or in need of protective services at page 1355 of the 1984 Montana Administrative Register, issue number 17.
2. The department has amended Rules 46.5.904 and 46.10.404 as proposed.

3. The department has amended Rule 46.5.905 as proposed with the following changes:

46.5.905 DAY CARE RATES Subsections (1) through (3) remain the same proposed.

(4) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of ~~\$8.00~~ \$10.00 per day or per night care; and upon approval by the department. Part-time care may be provided at a rate of up to a maximum of ~~\$1.00~~ \$1.25 per hour per child, up to a maximum of a full day or night care special rate of ~~\$8.00~~ \$10.00 and subject to the same requirements as applied to the daily rate.

Subsection (5) remains the same as proposed.

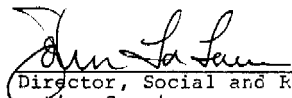
AUTH: Sec. 53-4-111 and 53-4-503 MCA

IMP: Sec. 53-4-514 MCA

4. The department has thoroughly considered all verbal and written commentary received:

COMMENT: Rule 46.5.905 (4) needs an additional amendment in that the \$8.00 special rate needs to be changed to \$10.00 to be consistent with the rest of the amendment.

RESPONSE: Rule 46.5.905 (4) has been amended as the department agrees that the special rate should be changed to \$10.00 to be consistent with the amendment as proposed in subsection (4). To further be consistent, the part-time care rate in this subsection is being changed from \$1.00 to \$1.25.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 5, 1984.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.304 and	)	RULES 46.12.304 AND
46.12.305 pertaining to	)	46.12.305 PERTAINING TO
third party liability for	)	THIRD PARTY LIABILITY FOR
medical assistance	)	MEDICAL ASSISTANCE

TO: All Interested Persons

1. On September 27, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.304 and 46.12.305 pertaining to third party liability for medical assistance at page 1409 of the 1984 Montana Administrative Register, issue number 18.

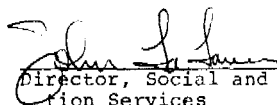
2. The department has amended Rules 46.12.304 and 46.12.305 as proposed.

3. The department has thoroughly considered the written commentary received:

COMMENT: The proposed amendment appears to say that before a provider may bill the Montana Medicaid Program he must bill or pursue in any way any potentially liable tort-feasor. It is understood that since the service is furnished to the patient and not to the tort-feasor, no contractual liability exists between the tort-feasor and the provider. Therefore, the tort-feasor would not be obligated to pay any bills submitted by a provider. It is further understood that a provider, merely by rendering service to an injured party, does not acquire a right to bring a cause of action on behalf of his patient against a potentially liable tort-feasor. In addition, even if a provider could bring a cause of action against a potentially liable tort-feasor, it may often be the case that the cost of maintaining such a cause of action would exceed the amount billed to the patient.

RESPONSE: The proposed rule does not require a provider to bring legal action against a tort-feasor. It only requires that the tort-feasor be billed (i.e. notified of their potential liability). Currently ARM 46.12.304 (2)(b) makes an exception to the requirement that providers first bill possible tort-feasors prior to Medicaid payment. This exception is being removed and providers will now be required to bill potential tort-feasors if the existence of such a party is known. Under state law (71-3-1114, MCA) medical providers have a right to place a lien against the proceeds of any judgement against such a tort-feasor. This current rule could be construed to prohibit the placement of such a lien if the patient is otherwise eligible for Medicaid. Obviously it is in the best interest of both providers and taxpayers if the

lien is exercised. Under the amendment providers can still receive Medicaid reimbursement if payment is not received from the tort-feasor, but federal law provides that the acceptance of Medicaid reimbursement precludes any further action to collect from a tort-feasor by exercising a lien.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State November 5, 1984.

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

In the matter of the adop-	)	NOTICE OF THE ADOPTION OF
tion of Rule 46.12.409 and	)	RULE 46.12.409 AND THE
the amendment of Rules	)	AMENDMENT OF RULES
46.12.401, 46.12.403,	)	46.12.401, 46.12.402,
46.12.404 and 46.12.408 per-	)	46.12.403, 46.12.404 AND
taining to medical assist-	)	46.12.408 PERTAINING TO
ance; provider sanctions	)	MEDICAL ASSISTANCE; PROVID-
	)	ER SANCTIONS

TO: All Interested Persons

1. On September 27, 1984, the Department of Social and Rehabilitation Services published notice of the adoption of Rule 46.12.409 and the amendment of Rules 46.12.401, 46.12.402, 46.12.403, 46.12.404 and 46.12.408 pertaining to medical assistance; provider sanctions at page 1404 of the Montana Administrative Register, issue number 18.

2. The department has amended Rules 46.12.401, 46.12.402, 46.12.403, 46.12.404 and 46.12.408 as proposed.

3. The department has adopted Rule 46.12.409, FAIR HEARING PROCEDURES, as proposed with the following changes:

46.12.409 FAIR HEARING PROCEDURES Subsections (1) through (1)(b) remain the same as proposed.

(c) The fair hearing request must be postmarked or delivered to the department not later than the 30th calendar day following the date of receipt notice of the department's written determination.

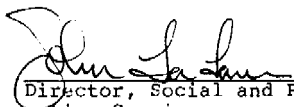
Subsections (1)(d) through (2) remain the same as proposed.

AUTH: Sec. 53-6-113 and 53-2-201 MCA

IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

4. Rule 46.12.409 is being adopted to clarify providers' right to a fair hearing. The rule as originally proposed indicated that the fair hearing request must be received not later than the 30th day following the date of receipt of the department's determination. This is being revised to make the date of notice the start of the time frame for appealing. This will avoid any arguments as to when the time period for appeal begins.

5. No written comments or testimony were received.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 5, 1984.

VOLUME NO. 40

OPINION NO. 78

DEPARTMENT OF COMMERCE - Montana Economic Development Board bound by local government decision on whether project is in public interest;

ECONOMIC DEVELOPMENT - Authority of local government to determine public interest of project under Montana Economic Development Act;

MONTANA CODE ANNOTATED - Sections 1-2-102, 17-5-1501 to 17-5-1529, 17-5-1526, 17-5-1527.

HELD: If the local government elects to hold a hearing pursuant to section 17-5-1526 or 17-5-1527, MCA, to determine whether a project is in the public interest, the Montana Economic Development Board is bound by the decision of the local government on the public interest question.

30 October 1984

D. Patrick McKittrick, Chairman  
Montana Economic Development Board  
Department of Commerce  
1424 Ninth Avenue  
Helena MT 59620

Dear Mr. McKittrick:

You have requested my opinion as to the Board's authority to make the determination of "public interest" under the Montana Economic Development Bond Act of 1983, §§ 17-5-1501 to 1529, MCA. Under the Act, it is clear that the Montana Economic Development Board may finance a project only upon a finding that the project is in the public interest. §§ 17-5-1526(1)(a), 17-5-1527(1)(a), MCA. The Act also provides an opportunity for the local government of the jurisdiction where the project will be located to hold a hearing to determine whether the project is in the public interest. §§ 17-5-1526(2), 17-5-1527(2), MCA. You wish to know whether the local government's determination on the public interest issue is final or whether the Board has the authority to reject the local government's decision on that issue.



Sections 17-5-1526 and 17-5-1527, MCA, govern the procedures to be followed prior to financing projects. The former section applies to minor projects and the latter section applies to major projects. With respect to the public interest issue, the two statutes are virtually identical. Section 17-5-1526, MCA, provides:

(1) The board may finance projects...under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

....

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of

the project; and the estimated cost of the project. [Emphasis added.]

Section 17-5-1527, MCA, has the same provisions, with minor differences in phrasing.

The portions of both statutes which provide that "the board may finance...projects...under this part only when it finds that the financing is in the public interest" may appear at first glance to support your position that the Board has the ultimate authority to override the local government's decision. However, subsection (2) of each statute provides that the finding of public interest must be made after a hearing, which may be held either by the local government or by the Board. Statutes must be read in their entirety and legislative intent may not be gleaned from the wording of any particular section or sentence, but only from consideration of the whole. Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 553 P.2d 980 (1976). Under the plain language of the Act, only one public hearing on the issue of public interest is contemplated. If the local government holds the hearing, it must notify the Board of its "determination" on the public interest question. §§ 17-5-1526(3), 17-5-1527(3), MCA. The noun "determination" is defined by Webster's New Twentieth Century Dictionary (2d ed. 1979) as synonymous with "decision" or "resolution," and the verb "determine" means "to settle conclusively." "Determination" thus connotes a final decision, as opposed to the term "recommendation" which connotes advice to be accepted or rejected. With respect to the public interest question, the Board's findings are merely a procedural formality if the local government has exercised its option to hear the testimony. The Act plainly does not authorize the Board to override the determination made by the local government.

Even if the statutes were ambiguous, the legislative history of the Act strongly supports my conclusion that the Legislature intended the local government, if it elects to hold the public hearing, to determine conclusively whether the project is in the public interest. The amendment allowing local governments the option to conduct the public interest hearing was introduced during the hearing on House Bill 700 in the House Select Committee on Economic Development on February 15, 1983. The minutes of the meeting reflect

extensive discussion of the proposed amendment and general agreement that the local government should be involved. The comments of Representative Fabrega, who sponsored the bill, are reported as follows:

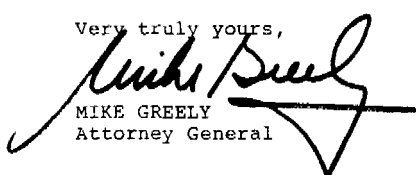
Representative Fabrega stated his understanding of the Missoula and Billings amendment is they would hold a hearing, and first of all the board has to advise the city that the request has been made, they hold the hearing and within 10 days of the hearing they have to advise the board as to their decision. If the local entity decides the project is not in their best interest, that is as far as it would go.

The minutes further reflect the intent that, in the event the local government held the hearing on public interest and determined the project to be in the public interest, the Board would then have a meeting to determine those factors regarding financing. The proper resolution of your question is thus clear from the plain meaning of the Act as well as its legislative history.

THEREFORE, IT IS MY OPINION:

If the local government elects to hold a hearing pursuant to section 17-5-1526 or 17-5-1527, MCA, to determine whether a project is in the public interest, the Montana Economic Development Board is bound by the decision of the local government on the public interest question.

Very truly yours,



MIKE GREELY  
Attorney General

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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, Montana State Capitol, Helena, Montana 59620.

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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf 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      | 1. Consult ARM topical index, volume 16. |
| Subject    | Update the rule by checking the          |
| Matter     | accumulative table and the table of      |
|            | contents in the last Montana             |
|            | Administrative Register issued.          |
| Statute    | 2. Go to cross reference table at end of |
| Number and | each title which lists MCA section       |
| Department | numbers and corresponding ARM rule       |
|            | numbers.                                 |

# 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1984. This table includes those rules adopted during the period July 1, 1984 through September 30, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 Montana Administrative Registers.

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