

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.5.121 pertaining to)
miscellaneous fees charged by the)
Business Services Division)

TO: All Concerned Persons

1. On May 22, 2014, the Secretary of State published MAR Notice No. 44-2-196 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1074 of the 2014 Montana Administrative Register, Issue Number 10.

2. The Secretary of State has amended the following rule as proposed, but has made the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.5.121 MISCELLANEOUS FEES (1) through (6) remain the same.
~~(7) Surety bond, cashier's check, or certificate of deposit — 15.00~~
(8) through (10) remain as proposed, but are renumbered (7) through (9).

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-405, ~~20-7-604~~, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, ~~82-1-104~~, MCA

3. No member of the public commented on the rule notice. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee (SAVA). The Secretary of State appeared before the SAVA committee on June 5, 2014, to respond to Ms. Aldrich's comments. A summary of the discussion follows:

COMMENT: Ms. Aldrich questioned the Secretary of State's authority to charge a fee for depositing surety bonds, cashier's checks, or certificates of deposit with the Secretary of State's office as required by 20-7-604 and 82-1-104, MCA, because those statutes do not specifically state that the Secretary of State is allowed to charge a fee for those services.

RESPONSE: The Secretary of State responded that even though those two statutes do not specifically state that the Secretary of State may charge a fee for those services, the Legislature enacted 2-15-405, MCA, in 2001 designating the Secretary of State's office as a proprietary fund agency, mandating that the Secretary of State charge a fee for the services it provides, and directing that all fees collected be deposited into an enterprise fund account. An enterprise fund is "financed and operated similar to private business enterprises, where the intent of the legislature is to finance or recover all costs primarily through user charges." See

Montana Operations Manual Policy 302 Governmental Accounting Overview. Senator Dave Lewis, who was the Director of the Office of Budget and Program Planning in 2001 when the statute was enacted, said it was his recollection that "the Appropriations Committee came up with the idea that if you use the office, you would pay the costs of the office."

The SAVA committee decided to introduce legislation to amend 20-7-604 and 82-1-104, MCA, to allow the Secretary of State to charge a fee for the services it provides under those statutes. Therefore, the Secretary of State agreed to eliminate (7) from its proposed amendments to the rule and to eliminate those two statutes from the implementation statutes. The Secretary of State will amend the rule in the future.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 30th day of June, 2014.