



State Administration and Veterans' Affairs Interim Committee
63rd Montana Legislature

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July 15, 2013

Linda McCulloch
Secretary of State
State Capitol Building
1301 E. 6th Avenue
Helena, MT 59601

Madam Secretary,

Pursuant to section 2-4-305(9), MCA, on July 11, 2013, the State Administration and Veterans' Affairs Interim Committee objected to New Rule I Ballot Form and Uniformity in the Montana Administrative Register, Rule Notice No. 44-2-181, in order to place it on the Committee's agenda for further discussion on Tuesday, August 20, 2013. The Committee did not object to the other proposals contained in Rule Notice No. 44-2-181.

The Committee's objection stems from concerns over the rule's compliance with the requirement in section 13-12-202, MCA, that the Secretary of State address certain topics through rulemaking. While proposed Rule I attempts to address the requirements of 13-12-202, MCA, it does so by referencing "prescribed forms and [the] election judge handbook". *New Rule I Ballot Form and Uniformity*. This does not appear to fulfill the Montana Administrative Procedure Act requirements under section 2-4-307, MCA, that any omissions from the Administrative Rules of Montana or the Montana Administrative Register necessitate certain criteria within the published rule notice, such as specific citations to the material adopted by reference, a statement of the general subject matter of the omitted material, and where the material may be found. This allows proper public comment on the proposed documents at the time of the proposal notice (since such material must be in existence at the time of the proposal notice). Although the Secretary is allowed to prescribe election materials under section 13-1-202, MCA, section 13-12-202, MCA, specifically governs "ballot form" requirements under rulemaking authority, which is subject to MAPA requirements.

The Committee would like the opportunity to discuss the matter with you or your staff directly to understand the reasoning behind the rule before considering whether to renew its objection.

If you have any questions or concerns, please do not hesitate to contact me.

K. Virginia Aldrich
State Administration and Veterans' Affairs Staff Attorney
cc Sheri Scurr

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