

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.141.301 definitions,)
24.141.405 fee schedule, and)
24.141.2102 continuing education)

TO: All Concerned Persons

1. On January 28, 2010, the State Electrical Board (board) published MAR notice no. 24-141-34 regarding the public hearing on the proposed amendment of the above-stated rules, at page 203 of the 2010 Montana Administrative Register, issue no. 2.

2. On February 18, 2010, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the February 26, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

The following comments and responses pertain to ARM 24.141.405:

COMMENT 1: Several commenters opposed the increase in fees and questioned the department's reliance of budgetary constraints, the need to increase the fees at this time, and in the proposed amounts. The commenters also cited the current economic and unemployment situations in Montana and the nation, and the hardship the increased fees will create. While some of these commenters acknowledged the probability that fees might need to be increased by ten or 15 percent, they opposed the proposed increase as "excessive."

RESPONSE 1: After lengthy deliberation and consideration of all the comments in opposition to the proposed fee increases, the board decided to amend this rule by decreasing the electrician renewal fee for residential, journeyman, and master electricians from the proposed fee of \$140 per renewal cycle to \$100 per renewal cycle, and decreasing the proposed contractor renewal fee of \$300 per renewal cycle to \$200 per renewal cycle. The remaining fees are amended exactly as proposed. The board again notes that fees have not been raised in seven years.

COMMENT 2: In opposing the fee increases, one commenter stated that the fees are a tax and noted that only the Legislature can tax the people.

RESPONSE 2: All licensing boards are statutorily mandated by the Legislature at 37-1-134, MCA, to set and maintain board fees commensurate with the costs of

licensure and regulation. The board must be self-supporting and fees authorized for licensure and regulation purposes are not taxes.

COMMENT 3: One commenter suggested that a 50 or 75 percent increase might accomplish the board's intended economic result. The commenter noted that the proposed increases in individual license fees were greater than contractor license fees, and stated that the individuals were bearing an unfair brunt of fee increases. This commenter also asked that the board return to a three-year renewal cycle to coincide with the issuance of the National Electric Code (NEC) and preclude duplication of continuing education credits.

RESPONSE 3: After considering all the comments received in opposition to the fee increases, the board is amending this rule accordingly to reduce the individual and contractor licensing fees. The board maintains a two-year renewal cycle for appropriation and budgeting purposes and cannot coordinate legislative appropriation with the NEC issuance.

COMMENT 4: A few commenters opposed the fee increases and suggested the board instead cut costs by cutting back like everyone else, retaining the current computer system, make common sense rules to reduce attorney charges, not issuing plastic apprentice cards, and ensuring that state employees make no personal phone calls and put in a day's work for a day's pay.

RESPONSE 4: Apprentices must carry their cards for five years and have them on their persons at all times when working, as proof of apprentice registration. The cards were wearing out and causing problems with presenting proof of registration. The plastic cards solved this problem and are cost effective, costing less than one dollar per year per apprentice.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are using electronic board books instead of paper ones and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 5: One commenter protested the fee increases stating that going from a three-year to a two-year renewal cycle represented a 33 percent increase, but that the department now has a computer system that streamlines renewals and should require less employee time. The commenter opposed the "200 %" increase in fees.

RESPONSE 5: When the board previously changed to a two-year renewal cycle, fees were reduced accordingly. The current proposed fee increase is actually 100 percent, not 200 percent. Per 37-1-134, MCA, fees must be commensurate with board costs. The computer systems mentioned are expensive to purchase and maintain and may require fee increases because all boards administratively attached to the department are required to pay their share of the costs.

COMMENT 6: Several commenters requested that the fee increases be phased in and demanded that the department provide a thorough and complete accounting of staff hours and costs allocated to the board each quarter.

RESPONSE 6: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board and is open to public inspection and scrutiny.

Fees can always be increased through administrative rulemaking, but projecting incremental increases does not account for changing costs and the need for fees to be commensurate with costs. Board staff does not have access to payroll information such as staff hours.

COMMENT 7: Several commenters opposed the fee increases and stated the increases punish local licensees by putting them at an unfair advantage in the marketplace. The commenters asked why the state bothers issuing licenses, alleging it does nothing to the unlicensed people caught working as electricians. The commenters suggested that the board increase revenue by surcharging out-of-state contractors and that the board should require a Montana jurisprudence exam and deny licensure to anyone refusing to take the exam.

RESPONSE 7: A license fee is not punishment; all licensees pay the same fee. The board has two inspectors in the field on a daily basis and the board does issue injunctions and impose fines for unlicensed practice. The board lacks the authority to impose a surcharge on out-of-state licensees. Currently, Montana laws and rules are addressed in the licensure examinations. A separate jurisprudence examination would be costly to develop and administer and would necessitate a further increase in fees to cover the required staff time and costs.

Remaining comments and responses pertain to ARM 24.141.2102:

COMMENT 8: Two commenters expressed concern that requiring "documented proof" of instructor credentials will be overly demanding and require copies of diplomas, etc. that would then require more board staff time to review. One commenter stated that the National Electrical Contractors' Association, which puts on courses, provides a catalogue with description of credentials of instructors, and that the national organization is responsible for checking credentials.

RESPONSE 8: By rule, the board requires certain credentials that course sponsors must request from course instructors. The board does not believe that it is onerous for course sponsors to provide the credentialing information, that has already been collected, to the board, or to comply by simply informing the board in writing of a course presenter's credentials.

COMMENT 9: One commenter stated that the proposed requirement for a course syllabus is cumbersome and too detailed, and asked that the board accept class descriptions, which had always sufficed in the past.

RESPONSE 9: The board agrees with the comment and is amending the rule to require a "course description and credit hours" instead of a syllabus. The board notes that this change will correlate the numbers of hours of credit offered with the description of the course provided.

4. The board has amended ARM 24.141.301 exactly as proposed.

5. The board has amended ARM 24.141.405 and 24.141.2102 with the following changes, stricken matter interlined, new matter underlined:

24.141.405 FEE SCHEDULE (1) through (4) remain as proposed.

- (a) Contractor ~~300~~ 200
- (b) Master ~~140~~ 100
- (c) Journeyman ~~140~~ 100
- (d) Residential ~~140~~ 100
- (5) through (8) remain as proposed.

24.141.2102 CONTINUING EDUCATION (1) through (3)(d) remain as proposed.

- (e) a ~~syllabus~~ course description and credit hours of each course.
- (4) through (7) remain as proposed.

STATE ELECTRICAL BOARD
JACK FISHER, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 19, 2010