

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.301.1001, 24.301.1003, and)
24.301.1007 and the repeal of ARM)
24.301.1006 pertaining to)
underground facilities)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On July 11, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82779856648>
Meeting ID: 827 7985 6648, Passcode: 579828
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 827 7985 6648, Passcode: 579828

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 5, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.301.1001 DEFINITIONS For the purposes of this chapter, the following definitions apply:

- (1) ~~"Advisory council" means the underground facility protection advisory council provided for by 69-4-520, MCA.~~
- (2) remains the same but is renumbered (1).
- (3) ~~"Department" means the Department of Labor and Industry, as provided by 69-4-501, MCA.~~
- (4) ~~"Excavator" has the same meaning as provided by 69-4-501, MCA.~~
- (5) ~~"Incident" has the same meaning as provided by 69-4-501, MCA.~~
- (6) ~~"Underground facility owner" has the same meaning as provided by 69-4-501, MCA.~~

AUTH: 69-4-522, MCA
IMP: 69-4-501, 69-4-520, MCA

REASON: There is reasonable necessity to repeal (1) and (3) through (6) because they merely adopt definitions from statutes. Those statutes already govern the program, so it is not necessary to repeat the definitions in rule.

24.301.1003 ASSESSMENT AND COLLECTION OF CIVIL PENALTIES

(1) remains the same.

(2) To timely issue civil penalties as required by 69-4-524 and 69-4-525, MCA, if a call center does not respond within ten days of a request, the department may issue a civil penalty based solely on the number of locate requests identified by the call center that takes locate requests for the area in which the incident occurred.

~~(a) For good cause shown, a party to whom a civil penalty has been issued pursuant to (2) this section may seek a recalculation of the penalty based on information received from all call centers.~~

~~(b) The department may withdraw a civil penalty if the underground facility owner, pursuant to 69-4-529, MCA, timely notifies the department that the civil penalty is not required.~~

~~(3) A party aggrieved by the imposition of a civil penalty may dispute the penalty as provided for in ARM 24.301.1009.~~

~~(4) The department may refer for debt collection any civil penalty that has not been disputed and remains unpaid for more than 75 days after issuance.~~

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-524, 69-4-525, 69-4-529, 69-4-530, MCA

REASON: Subsection (2)(b) is proposed to be stricken because it unnecessarily duplicates 69-4-529(3), MCA. Section (3) is proposed to be stricken because it is an unnecessary cross reference. Section (4) is proposed to be stricken because it is unnecessary to set forth business process in rule, and the process for collecting debts owed is set forth in statute.

24.301.1007 COLLECTION OF ANNUAL FEES (1) through (3) remain the same.

~~(4) The department may refer fees remaining unpaid for more than 90 days for collection.~~

~~(a) (4) The department, in its sole discretion, may allow an underground facility owner billed an annual fee of less than \$50 to defer payment of the fee until the following year. During the deferral period, the department will not refer an underground facility owner having a deferred annual fee to collection.~~

~~(b) The department will not defer payment of annual fees more than once every two years for an underground facility owner.~~

~~(5) The amount of the annual fee to be paid by an underground facility owner is ~~\$0.10~~ \$0.08 per outgoing locate request made by each call center.~~

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-530, MCA

REASON: Section (4) is proposed to be stricken because it unnecessarily sets forth business process. The fee rate change proposed in (5) is expected to impact approximately 364 facility owners and result in a decrease in revenue of \$13,255.90.

4. The rule proposed to be repealed is as follows:

24.301.1006 COLLECTION OF FINES

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-529, 69-4-530, MCA

REASON: There is reasonable necessity to repeal this rule. Section (1) unnecessarily duplicates 69-4-529(5), MCA. Section (2) unnecessarily cross-references ARM 24.301.1009. Section (3) unnecessarily sets forth business process relating to the statutory authority set forth at 69-4-530, MCA.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., July 19, 2024.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 11, 2024.