

Laws Pertaining to Montana's **Conservation Districts**

2020 Edition

- *Conservation Districts*
- *Natural Streambed and Land Preservation Act*
- *Montana Rangeland Resources Act*
- *Government Structure and Administration*



PREFACE

Montana's conservation districts are political subdivisions of state government, created by the legislature in 1939. A non-paid elected and appointed board of supervisors governs the activities of a conservation district. The 58 conservation districts in Montana are part of national network of over 3,000 conservation districts similarly organized in all 50 states.

Their main function is to conduct local activities to promote conservation of natural resources. The activities vary from district to district, but generally include education or on-the-ground conservation projects. Conservation districts, however, have the authority to pass land use ordinances if necessary to conserve local natural resources. In addition, individuals planning to work in or near a perennial stream or river must first receive a permit from their local conservation district.

Funding for conservation district operations comes from their authority to levy a tax on real property within their district. For conservation projects and educational activities, conservation districts rely heavily on grants from state and federal governments.

The Natural Resource Conservation Service (NRCS) provides the majority of technical assistance for conservation district activities and the two entities usually share office space when their offices are located in the same towns.

The Department of Natural Resources and Conservation is required by law to provide the conservation districts with administrative, technical, financial and legal assistance.

This book is a compilation of laws pertaining to conservation districts. It may not be all-inclusive, as other laws may apply in certain circumstances.

For additional information about the Department or conservation district programs, visit our website: <http://dnrc.mt.gov/divisions/cardd/conservation-districts>

Forms available on our website:

Natural Streambed and Land Preservation Act

- Joint Application for Work on/or Near Streams (Form 270)
- Team Member Report (Form 272)
- Board's Decision (Form 273)
- Official Complaint (Form 274)

Grants and Loans

- District Development Grants
- 223 Grant Application and guidelines
- Rangeland Improvement Loan Application and Guidelines
- Education Mini Grants
- Irrigation Development
- Reclamation and Development Grants
- Renewable Resource Grants and Loans
- Watershed Management Grants

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TITLE 2 GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 2 STANDARDS OF CONDUCT

Chapter Cross-References

Elected official's business disclosure statement, 2-2-106.

Arrest of public officer in certain civil actions involving officer's act or omission, 27-16-102.

Part 1 Code of Ethics

Part Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.

Judges — removal and discipline, Art. VII, sec. 11, Mont. Const.

Part Administrative Rules

Title 44, chapter 10, subchapter 6, ARM Code of ethics and guidelines.

Part Attorney General's Opinions

City Employee as Councilman — No Conflict of Interest: There is no inherent conflict of interest when a city employee is also an elected city councilman in a council-mayor form of municipal government. The opportunity to commit the breach of a fiduciary duty does not constitute a conflict of interest. 41 A.G. Op. 81 (1986).

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

Cross-References

Constitutional mandate to provide code of ethics, Art. XIII, sec. 4, Mont. Const.

Code of fair campaign practices, 13-35-301.

2-2-102. Definitions. As used in this part, the following definitions apply:

- (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.
- (3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.
 - (b) The term does not include:
 - (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

- (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;
- (iii) educational material directly related to official governmental duties;
- (iv) an award publicly presented in recognition of public service; or
- (v) educational activity that:
 - (A) does not place or appear to place the recipient under obligation;
 - (B) clearly serves the public good; and
 - (C) is not lavish or extravagant.
- (4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.
- (5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
- (6) "Private interest" means an interest held by an individual that is:
 - (a) an ownership interest in a business;
 - (b) a creditor interest in an insolvent business;
 - (c) an employment or prospective employment for which negotiations have begun;
 - (d) an ownership interest in real property;
 - (e) a loan or other debtor interest; or
 - (f) a directorship or officership in a business.
- (7) "Public employee" means:
 - (a) any temporary or permanent employee of the state;
 - (b) any temporary or permanent employee of a local government;
 - (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
 - (d) a person under contract to the state.
- (8) "Public information" has the meaning provided in 2-6-1002.
- (9) (a) "Public officer" includes any state officer and any elected officer of a local government.
 (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.
- (10) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.
- (11)(a) "State agency" includes:
 - (i) the state;
 - (ii) the legislature and its committees;
 - (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
 - (iv) the university system; and
 - (v) all independent commissions and other establishments of the state government.
 (b) The term does not include the judicial branch.
- (12) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995; amd. Sec. 1, Ch. 122, L. 2001; amd. Sec. 1, Ch. 77, L. 2009; amd. Sec. 2, Ch. 156, L. 2019.

2-2-103. Public trust — public duty.

- (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.
- (2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.
- (3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.
- (4) (a) The enforcement of this part for:
 - (i) state officers, legislators, and state employees is provided for in 2-2-136;
 - (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;
 - (iii) local government officers and employees is provided for in 2-2-144.
- (b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995; amd. Sec. 2, Ch. 122, L. 2001.

Cross-References

All state officers and employees to be bonded, 2-9-602.

2-2-104. Rules of conduct for public officers, legislators, and public employees.

- (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:
 - (a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or
 - (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - (i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
 - (ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.
- (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.
- (3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:
 - (i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or
 - (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

- (b) Subsection (3)(a) does not prohibit:
- (i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or
 - (ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.
- (c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

Cross-References

Prohibited campaign practices, Title 13, ch. 35, part 2.
Reports of campaign contributions required, 13-37-225.

2-2-105. Ethical requirements for public officers and public employees.

- (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.
- (2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.
- (3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.
- (4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.
- (5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

Cross-References

Definitions of rules and contested cases relating to administrative rules, 2-4-102.
Public contracts generally, Title 18, ch. 1.

2-2-106. Disclosure.

- (1) (a) Prior to December 15 of each even-numbered year, each state officer, holdover senator, supreme court justice, and district court judge shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.
- (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.
- (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.
- (2) Except as provided in subsection (4), the statement must provide the following information:
 - (a) the name, address, and type of business of the individual;
 - (b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;
 - (c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;
 - (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and
 - (e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.
- (3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).
- (4) An individual required to file a business disclosure statement may certify that the information required by subsection (2) has not changed from the most recent statement filed by the individual. The commissioner shall provide a certification form.
- (5) The commissioner of political practices shall make the business disclosure statements and certification forms available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995; amd. Sec. 2, Ch. 114, L. 2003; amd. Sec. 2, Ch. 130, L. 2005; amd. Sec. 1, Ch. 156, L. 2015; amd. Sec. 1, Ch. 166, L. 2017.

2-2-107 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

- (1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;
- (2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or
- (3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995; amd. Sec. 1, Ch. 327, L. 2003.

2-2-112. Ethical requirements for legislators.

- (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.
- (2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.
- (3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:
 - (a) whether the conflict impedes the legislator's independence of judgment;
 - (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
 - (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
 - (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.
- (4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.
- (5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for public officers and public employees.

- (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.
- (2) A public officer or a public employee may not:
 - (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;
 - (b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;
 - (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

- (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;
 - (e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or
 - (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.
- (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
- (i) authorized by law; or
 - (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.
- (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:
- (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;
 - (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.
- (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.
- (d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.
- (ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.
- (4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.
- (b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official

functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

- (5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:
 - (a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or
 - (b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.
- (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.
- (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.
- (8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.
- (9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.
- (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005; amd. Sec. 1, Ch. 386, L. 2011; amd. Sec. 1, Ch. 14, L. 2013; amd. Sec. 1, Ch. 259, L. 2015; amd. Sec. 3, Ch. 156, L. 2019.

2-2-122 through 2-2-124 reserved.

2-2-125. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

2-2-126 through 2-2-130 reserved.

2-2-131. Disclosure.

A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee

shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995; amd. Sec. 1, Ch. 65, L. 2005.

Attorney General's Opinions

Disclosure — Abstinence From Voting — When Contract Voidable: Where a local government official has a conflict of interest, such as a substantial interest in a business bidding on a local government contract, the official must comply with the disclosure and abstinence from voting provisions of 2-2-125 (now repealed) and 2-2-131, even though the interest may be permissible under the exceptions contained in 2-2-201. If the interest is not permissible under the exceptions listed in 2-2-201, the contract is voidable and abstinence from voting will not exonerate the official. 40 A.G. Op. 28 (1983).

Disclosure Voluntary: Disclosure of a potential conflict of interest by a local government official is purely voluntary and may be done prior to taking any official action, as defined in 2-2-102. 40 A.G. Op. 28 (1983).

County Commissioners — Fiduciary Duty: A County Commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under 7-5-2106 unless the Commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under 2-2-125 (now repealed) by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of 2-2-125 (now repealed). 38 A.G. Op. 55 (1979).

Who Voluntary Disclosure Excuses: The voluntary disclosure provisions of this section serve to excuse an act that otherwise would be a violation of the code of ethics only if the individual involved is a member of the local governing body, a state department head, or a member of a state quasi-judicial or rulemaking board as permitted by 2-2-121 and 2-2-125 (now repealed). Except in those two instances, this section does not relieve a public officer or employee of his obligations of breach of fiduciary duty other than to show good faith on the part of the person disclosing. 37 A.G. Op. 104 (1978).

2-2-132. Repealed. Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

2-2-133 and 2-2-134 reserved.

2-2-135. Ethics committees.

- (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.
- (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

History: En. Sec. 14, Ch. 562, L. 1995; amd. Sec. 3, Ch. 4, Sp. L. May 2007.

2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney.

- (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5).
- (b) The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.
- (c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part.
- (d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.
- (2) (a) If the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.
- (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal contested case proceeding are presumed to be public information.
- (c) The commissioner shall issue a decision based on the record established before the commissioner. The decision issued after a hearing is public information open to inspection.
- (3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.
- (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.
- (c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline.
- (d) The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

- (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.
- (5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

History: En. Sec. 15, Ch. 562, L. 1995; amd. Sec. 4, Ch. 42, L. 1997; amd. Sec. 4, Ch. 122, L. 2001; amd. Sec. 2, Ch. 386, L. 2011; amd. Sec. 1, Ch. 234, L. 2013; amd. Sec. 4, Ch. 156, L. 2019.

2-2-137. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 16, Ch. 562, L. 1995.

2-2-138. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 17, Ch. 562, L. 1995.

2-2-139. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 18, Ch. 562, L. 1995.

2-2-140. Complaint — confidentiality.

- (1) A complaint filed under this part alleging a violation by an elected public officer is public information open to inspection.
- (2) (a) If a complaint is filed under this part alleging a violation by a public employee or an unelected public officer, the complaint and related documents are confidential and may not be considered open for inspection.
- (b) The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the enforcement officer until the enforcement officer issues an initial decision as to whether the complaint states a potential violation of this part.
- (c) The person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this section. If a waiver is filed with the enforcement officer, the complaint and any related documents are public information open to inspection.
- (3) If a complaint alleges a violation under this part by more than one person and at least one person is an elected public officer and at least one person is a public employee or an unelected public officer, the enforcement officer must release the portions of the complaint that relate to the elected public officer as provided by subsection (1) and must maintain the confidentiality of the portions of the complaint relating to the public employee or unelected public officer as provided by subsection (2). A complainant shall likewise maintain the confidentiality of the complaint and any related documents concerning the public employee or unelected public officer as provided by subsection (2).
- (4) For the purposes of this section, the following definitions apply:
 - (a) "Elected" means chosen by vote or acclamation or appointed to a vacancy in an otherwise elected position.
 - (b) "Enforcement officer" means:
 - (i) the commissioner of political practices for actions brought under 2-2-136 or 2-2-144(6);
 - (ii) except as provided in subsection (4)(b)(i) or (4)(b)(iii), the county attorney for actions brought under 2-2-144; and

- (iii) if a local government has established a three-member panel pursuant to 2-2-144(5), the three-member panel for actions brought under 2-2-144.
- (c) “Unelected” means appointed to or employed in a position not subject to election.

History: En. Sec. 1, Ch. 156, L. 2019.

2-2-141 reserved.

2-2-142. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 19, Ch. 562, L. 1995.

2-2-143. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 20, Ch. 562, L. 1995.

2-2-144. Enforcement for local government.

- (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.
- (2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.
- (3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.
- (4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.
- (5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.
- (b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.
- (6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

History: En. Sec. 21, Ch. 562, L. 1995; amd. Sec. 5, Ch. 122, L. 2001.

2-2-145. Retaliation unlawful — civil liability — remedies — statute of limitations — definitions.

- (1) It is unlawful for a state agency, state officer, public officer, or public employee to retaliate against, or to condone or threaten retaliation against, an individual who, in good faith, alleges waste, fraud, or abuse.
- (2) A person who violates a provision of this section is liable in a civil action in a court of competent jurisdiction. The provisions of 2-9-305 apply if the person is being sued in a civil action for actions taken within the course and scope of the person's employment and the person is a state officer, public officer, or public employee.
- (3) For purposes of this section:
 - (a) "person" has the meaning provided in 2-5-103;
 - (b) "retaliate" means to take any of the following actions against an individual because the individual, in good faith, alleged waste, fraud, or abuse:
 - (i) terminate employment;
 - (ii) demote;
 - (iii) deny overtime, benefits, or promotion;
 - (iv) discipline;
 - (v) decline to hire or rehire;
 - (vi) threaten or intimidate;
 - (vii) reassign to a position that hurts future career prospects;
 - (viii) reduce pay, work hours, or benefits; or
 - (ix) take another adverse personnel action; and
 - (c) "state agency" has the meaning provided in 1-2-116.
- (4) Remedies available to an aggrieved individual for a violation may include:
 - (a) reinstatement to a lost position;
 - (b) compensation for lost benefits, including service credit;
 - (c) compensation for lost wages;
 - (d) payment of reasonable attorney fees;
 - (e) payment of court costs;
 - (f) injunctive relief; and
 - (g) compensatory damages.
- (5) A lawsuit alleging a violation of this section must be brought within 2 years of the alleged violation.
- (6) If a state agency maintains written internal procedures under which an individual may appeal an action described in subsection (3)(b) within the agency's organizational structure, the individual shall first exhaust those procedures before filing an action under this section. The individual's failure to initiate or exhaust available internal procedures is a defense to an action brought under this section.
- (7) For purposes of this subsection, if the state agency's internal procedures are not completed within 90 days from the date the individual may file an action under this section, the agency's internal procedures are considered exhausted. The limitation period in subsection (5) is tolled until the procedures are exhausted. The provisions of the agency's internal procedures may not in any case extend the limitation period in subsection (5) more than 240 days.
- (8) If the state agency maintains written internal procedures described in subsection (6), the agency shall, within 7 days of receiving written notice from the complaining individual of the action described in subsection (3)(b), notify the individual of the existence of the written procedures and supply the individual with a copy. If the agency fails to comply with this subsection, the individual is relieved from compliance with subsection (6).
- (9) The commissioner of political practices is not required or authorized to enforce this section.

History: En. Sec. 1, Ch. 215, L. 2017.

Part 2

Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts

- (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.
- (2) In this section, the term:
 - (a) “be interested in” does not include holding a minority interest in a corporation;
 - (b) “contract” does not include:
 - (i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;
 - (ii) merchandise sold to the highest bidder at public auctions;
 - (iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;
 - (iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
 - (c) “directly involved” means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;
 - (d) “former employee” does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981; amd. Sec. 1, Ch. 65, L. 1991; amd. Sec. 1, Ch. 322, L. 1993; amd. Sec. 1, Ch. 181, L. 2001.

2-2-202. Public officers not to have interest in sales or purchases.

State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.

2-2-203. Voidable contracts.

Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.

2-2-204. Dealings in warrants and other claims prohibited.

The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.

2-2-205. Affidavit to be required by auditing officers.

Each officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers shall, before allowing the accounts, require each of the officers to make and file with the auditing officer an affidavit that the affiant has not violated any of the provisions of this part.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505; amd. Sec. 35, Ch. 61, L. 2007.

2-2-206. Officers not to pay illegal warrant.

Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

2-2-207. Settlements to be withheld on affidavit.

- (1) Each officer charged with the disbursement of public money who is informed by affidavit establishing probable cause that an officer whose account is about to be settled, audited, or paid has violated any of the provisions of this part shall suspend the settlement or payment and cause the officer to be prosecuted for the violation by the county attorney.
- (2) If there is a judgment for the defendant upon prosecution, the proper officer may proceed to settle, audit, or pay the account as if an affidavit had not been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507; amd. Sec. 36, Ch. 61, L. 2007.

Part 3

Nepotism

Part Cross-References

Discrimination in employment, 49-2-303.

Employment of state and local government personnel, 49-3-201.

2-2-301. Nepotism defined.

Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.

- (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.
- (2) The provisions of 2-2-303 and this section do not apply to:
 - (a) a sheriff in the appointment of a person as a cook or an attendant;
 - (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
 - (c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;
 - (d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;
 - (e) the employment of election judges;
 - (f) the employment of pages or temporary session staff by the legislature; or
 - (g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.
- (3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the time and place for the intended action must be published at least 15 days prior to the intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part); amd. Sec. 1, Ch. 117, L. 1987; amd. Sec. 1, Ch. 55, L. 1991; amd. Sec. 1, Ch. 238, L. 1991; amd. Sec. 10, Ch. 562, L. 1995; amd. Sec. 1, Ch. 138, L. 2005; amd. Sec. 1, Ch. 316, L. 2005.

2-2-303. Agreements to appoint relative to office unlawful.

It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law.

A public officer or employee or a member of any board, bureau, or commission of this state or any political subdivision who, by virtue of the person's office, has the right to make or appoint any person to render services to this state or any subdivision of this state and who makes or appoints a person to the services or enters into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to the person making the appointment or connected with the person making the appointment by consanguinity within the fourth degree or by affinity within the second degree is guilty of a misdemeanor and upon conviction shall be punished by a fine not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or both.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520; amd. Sec. 1, Ch. 253, L. 1989; amd. Sec. 37, Ch. 61, L. 2007.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Chapter Cross-References

Government Accountability Act, Title 2, ch. 11, part 1.

Chapter Administrative Rules

Title 1, chapter 3, subchapter 1, ARM Right of public participation.

Part 1

Notice and Opportunity to Be Heard

Part Administrative Rules

ARM 1.3.102 Notice of agency action that is of significant interest to public.

Part Law Review Articles

Mapping the Treasure State: What States Can Learn from Redistricting in Montana, Aarab & Regnier, 76 Mont. L. Rev. 257 (2015).

2-3-101. Legislative intent.

The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

- (1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:
 - (a) the legislature and any branch, committee, or officer thereof;
 - (b) the judicial branches and any committee or officer thereof;
 - (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
 - (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.
- (2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.
- (3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:
 - (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
 - (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to ensure guidelines adopted.

- (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.
- (b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.
- (2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted

as rules and published in a manner so that the rules may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5); amd. Sec. 1, Ch. 425, L. 2003.

Case Notes

Conservation District Afforded Public Fundamentally Fair Participation in Process: Though exempt from the dictates of the Montana Administrative Procedure Act as a political subdivision of the state, the conservation district followed its own rules, provided notice, and allowed an extended opportunity for the submission of oral and written information in deciding Mitchell Slough's status under The Natural Streambed and Land Preservation Act of 1975, also known as the "310 Law", Title 75, chapter 7, part 1. Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

Attorney General's Opinions

City Council Agenda — Addition of and Immediate Action on Certain Items Limited: Only an item that is not of significant public interest or that is otherwise exempt from public participation requirements may be added to a City Council agenda and acted upon at the same City Council meeting. 51 A.G. Op. 12 (2005).

2-3-104. Requirements for compliance with notice provisions.

An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

- (1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;
- (2) a proceeding is held as required by the Montana Administrative Procedure Act;
- (3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or
- (4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

Case Notes

Publication Not Mandated: At its regular meeting on March 10, 1981, the Board of Trustees announced that had until April 1 to issue tenure contracts but that had not yet made final decisions. On March 12, the chairman contacted the clerk to tell her there would be a special meeting at 9 a.m. on March 14. The clerk contacted the local radio stations, who announced the meeting. The Board met and went into executive session. When plaintiff's contract was not renewed, she claimed the Board had violated the notice provisions of the open meeting law. The court held that the Montana open meeting law does not specifically mandate notice by publication. Publication is a method of proving notice. The obligation of the Montana open meeting law is to ensure that the public has ample opportunity to participate in decisions before final action is taken. The evidence in this case indicated that the opportunity was given. Sonstelie v. Bd. of Trustees, 202 M 414, 658 P2d 413, 40 St. Rep. 179 (1983).

Notice of Public Meeting Held Insufficient: *Where two of three County Commissioners held a telephone meeting to discuss approval of a preliminary subdivision plat and were required to give notice of the meeting, the Board failed to comply in that a county newspaper article did not supply sufficient*

facts concerning the time and place of the meeting to permit further public comment, nor was a 2-days' posted public notice ever given. Bd. of Trustees v. County Comm'rs, 186 M 148, 606 P2d 1069 (1980).

2-3-105. Supplemental notice by radio or television.

- (1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.
- (2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.
- (3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.
- (4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201; amd. Sec. 38, Ch. 61, L. 2007.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views — public hearings.

- (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.
- (2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3); amd. Sec. 1, Ch. 487, L. 1997.

Cross-References

*Right of public participation in government, Art. II, sec. 8, Mont. Const.
Submission of comments by electronic mail over Internet, 2-3-301.*

Case Notes

Conservation District Afforded Public Fundamentally Fair Participation in Process: Though exempt from the dictates of the Montana Administrative Procedure Act as a political subdivision of the state, the conservation district followed its own rules, provided notice, and allowed an extended opportunity for the submission of oral and written information in deciding Mitchell Slough's status under The Natural Streambed and Land Preservation Act of 1975, also known as the "310 Law", Title 75, chapter 7, part 1. Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

- (1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- (2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- (3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

2-3-113. Declaratory rulings to be published.

The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement — attorney fees.

- (1) The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the person learns, or reasonably should have learned, of the agency's decision.
- (2) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229; amd. Sec. 1, Ch. 211, L. 2007; amd. Sec. 1, Ch. 266, L. 2015.

Part 2 Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

Attorney General's Opinions

Mechanical Recordings of Public Meetings: A member of the public may make a mechanical recording of the proceedings and deliberations of an open school board meeting. 38 A.G. Op. 8 (1979).

2-3-202. Meeting defined. As used in this part, “meeting” means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.

- (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.
- (2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.
- (3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
- (4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.
 (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).
- (5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.
- (6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

Cross-References

Right of public to observe deliberations of all public bodies, Art. II, sec. 9, Mont. Const.

Right of individual privacy, Art. II, sec. 10, Mont. Const.

Legislature — organization and procedure, Art. V, sec. 10, Mont. Const.

Notice of agency action required, 2-3-103.

Criminal penalty for closed meeting — official misconduct, 45-7-401.

Attorney General's Opinions

Public Disclosure — Right to Know Versus Individual Privacy: A public body may close a meeting under 2-3-203 when the matter discussed relates to individual privacy and the demand for individual privacy clearly exceeds the merits of public disclosure. 37 A.G. Op. 170 (1978).

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. A person may not be excluded from any open meeting under this part and may not be prohibited from photographing, televising, transmitting images or audio by electronic or digital means, or recording open meetings. The presiding officer may ensure that these activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405; amd. Sec. 1, Ch. 138, L. 2017.

Attorney General's Opinions

Mechanical Recordings of Public Meetings: A member of the public may make a mechanical recording of the proceedings and deliberations of an open school board meeting. 38 A.G. Op. 8 (1979).

2-3-212. Minutes of meetings — public inspection.

- (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).
- (2) Minutes must include without limitation:
 - (a) the date, time, and place of the meeting;
 - (b) a list of the individual members of the public body, agency, or organization who were in attendance;
 - (c) the substance of all matters proposed, discussed, or decided; and
 - (d) at the request of any member, a record of votes by individual members for any votes taken.
- (3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.
- (4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403; amd. Sec. 1, Ch. 65, L. 2011; amd. Sec. 29, Ch. 348, L. 2015.

Cross-References

Persons entitled to examine and copy public records, 2-6-1003.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406; amd. Sec. 2, Ch. 211, L. 2007.

Case Notes

Lack of Notice of Public Meeting as Voiding Decision — Abuse of Discretion: Where County Commissioners failed to follow the statutory requirements for notice for a meeting of the Board of County Commissioners, the District Court had discretionary authority to void the results of the meeting, and where the Commissioners failed to fulfill their burden of proving the meeting legal, it was a clear abuse of discretion for the court not to void the results of the meeting. Bd. of Trustees v. County Comm'rs, 186 M 148, 606 P2d 1069 (1980).

2-3-214. Recording of meetings for certain boards.

- (1) Except as provided in 2-3-203, the following boards shall record their public meetings in a video or audio format:
 - (a) the board of investments provided for in 2-15-1808;
 - (b) the public employees' retirement board provided for in 2-15-1009;
 - (c) the teachers' retirement board provided for in 2-15-1010;
 - (d) the board of public education provided for in Article X, section 9, of the Montana constitution; and
 - (e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.
- (2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.
- (3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in 5-11-1111 or through publication of streaming video or audio content on the respective board's website.
- (b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

History: En. Sec. 1, Ch. 133, L. 2015.

2-3-215 through 2-3-220 reserved.

2-3-221. Costs to prevailing party in certain actions to enforce constitutional right to know. A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632; amd. Sec. 39, Ch. 61, L. 2007; amd. Sec. 30, Ch. 348, L. 2015.

Case Notes

Fees Not Recoverable Against Private Party: Right-to-know fees are recoverable under 2-3-221 only when the prevailing party is successful in enforcing the party's rights under Art. II, sec. 9, Mont. Const., against a public body or governmental agency. A party is not entitled to recover right-to-know fees

against a nonpublic or nongovernmental entity. Shockley v. Cascade County, 2016 MT 34, 382 Mont. 209, 367 P.3d 336.

Part 3 Use of Electronic Mail Systems

2-3-301. Agency to accept public comment electronically — dissemination of electronic mail address and documents required — fees prohibited.

- (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.
- (2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:
 - (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
 - (b) the telephone directory of state agencies published by the department of administration;
 - (c) any notice of agency existence, purpose, and operations published on the internet; or
 - (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).
- (3) An agency shall, at the request of another agency or person and subject to 2-6-1003, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.
- (4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.
- (5) As used in this section, “agency” means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

History: En. Sec. 1, Ch. 484, L. 1999; amd. Sec. 1, Ch. 77, L. 2001; amd. Sec. 19, Ch. 313, L. 2001; amd. Sec. 1, Ch. 41, L. 2011; amd. Sec. 31, Ch. 348, L. 2015.

CHAPTER 6 PUBLIC RECORDS

Part 10 General Provisions

Part Administrative Rules

Title 44, chapter 14, ARM Records and information management.

2-6-1001. Purpose. The purpose of this chapter is to ensure efficient and effective management of public records and public information, in accordance with Article II, sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.

2-6-1002. Definitions. As used in this chapter, the following definitions apply:

- (1) “Confidential information” means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:
 - (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;
 - (b) related to judicial deliberations in adversarial proceedings;
 - (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
 - (d) designated as confidential by statute or through judicial decisions, findings, or orders.
- (2) “Constitutional officer” means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.
- (3) “Constitutional officer record” means a public record prepared, owned, used, or retained by a constitutional officer.
- (4) “Essential record” means a public record immediately necessary to:
 - (a) respond to an emergency or disaster;
 - (b) begin recovery or reestablishment of operations during and after an emergency or disaster;
 - (c) protect the health, safety, and property of Montana citizens; or
 - (d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.
- (5) “Executive branch agency” means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.
- (6) “Historic record” means a public record found by the state archivist to have permanent administrative or historic value to the state.
- (7) “Local government” means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.
- (8) “Local government records committee” means the committee provided for in 2-6-1201.
- (9) “Permanent record” means a public record designated for long-term or permanent retention.
- (10) “Public agency” means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department, board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.
- (11) “Public information” means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.
- (12) “Public officer” means any person who has been elected or appointed as an officer of state or local government.
- (13) “Public record” means public information that is:
 - (a) fixed in any medium and is retrievable in usable form for future reference; and
 - (b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.
- (14) “Records manager” means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency’s public records and information.

- (15) “State records committee” means the state records committee provided for in 2-6-1107.

History: En. Sec. 2, Ch. 348, L. 2015.

2-6-1003. Access to public information — safety and security exceptions — Montana historical society exception.

- (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.
- (2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.
- (3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records must be made accessible to the public.

History: En. Sec. 3, Ch. 348, L. 2015.

Case Notes

Publicly Filed Floodplain Study Not Considered Trade Secret — Denial of Injunction to Prohibit Copying of Study Proper: Plaintiff conducted a floodplain study that was filed with the city of Kalispell as part of a property development permit request. Owners of nearby property sought to review and copy the study. The city allowed review of the study, but the request for a copy was denied without permission of plaintiff. Plaintiff denied the copy request and sought an injunction to prohibit the city from providing copies of the study, but the request for an injunction was denied, so plaintiff appealed, citing trade secrets and copyright protection. The Supreme Court noted that a trade secret must be the subject of reasonable efforts to maintain its secrecy. However, the study document was readily ascertainable by anyone who wished to view it, so plaintiff could not argue that the study was a confidential trade secret. Further, plaintiff failed to show that the contemplated use of the data would violate copyright law. Last, plaintiff argued that the District Court failed to engage in the constitutional balancing analysis required in 2-6-102 (now repealed, similar provision in 2-6-1003), but the Supreme Court held that plaintiff did not establish any individual privacy or property interest that could be balanced against the merits of public disclosure. Thus, denial of the injunction request was affirmed. Billmeyer v. Kalispell, 2007 MT 116, 337 M 242, 160 P3d 869 (2007).

Affidavit — Public Document: The provisions of Art. II, sec. 9, Mont. Const., apply to local government. The Clerk of the District Court is an office of local government. An affidavit filed with the Clerk of a District Court in support of a motion for leave to file a criminal charge or warrant is a document of a public body or agency of a subdivision of state government. Assoc. Press v. St., 250 M 299, 820 P2d 421, 48 St. Rep. 958 (1991).

2-6-1004 and 2-6-1005 reserved.

2-6-1006. Public information requests — fees.

- (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.
- (2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by:
 - (a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or
 - (b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).
- (3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.
- (4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.
- (5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.
- (6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.
- (b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

History: En. Sec. 4, Ch. 348, L. 2015.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Administrative Rules

ARM 44.2.204 Access to documents and fees for copies.

ARM 44.5.121 Miscellaneous fees.

ARM 44.5.122 Manual and online search fees.

Title 44, chapter 14, subchapter 3, ARM Records and information management — fees.

2-6-1007. Special fees allowable for certain information.

- (1) In addition to the fee allowed under 2-6-1006, the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative body or its members or staff.
- (2) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer

concerning the taxpayer's property.

- (3) All fees received by the department of revenue under 2-6-1006 and this section must be deposited in the property value improvement fund as provided in 15-1-521.
- (4) In accordance with the fees allowed under 2-6-1006, the Montana historical society may charge fees as approved by its board of trustees for copies of materials contained in its collections, based on documentable curatorial duties as set forth in 22-3-101.

History: En. Sec. 5, Ch. 348, L. 2015.

Administrative Rules

Title 44, chapter 14, subchapter 3, ARM Records and information management — fees.

2-6-1008. Certified copies of records — historic records and constitutional officer records — exception.

- (1) A person may request a certified copy of a public record from a public agency subject to the provisions of 2-6-1003. The public agency may charge a fee for the certified copy in accordance with 2-6-1006.
- (2) A person may request a certified copy of a historic record or a constitutional officer record from the Montana historical society subject to the provisions of 2-6-1003. The Montana historical society may charge a fee for the certified copy in accordance with 2-6-1006 and 2-6-1007(4).
- (3) A certified copy created by the Montana historical society of a historic record or a constitutional officer record has the same force in law as if made by the original public agency that created the record.
- (4) Pursuant to 2-15-403, this section does not apply to certified copies provided by the secretary of state for information contained in the secretary of state's corporate and uniform commercial code electronic filing system.

History: En. Sec. 9, Ch. 348, L. 2015.

2-6-1009. Written notice of denial — civil action — costs to prevailing party in certain actions to enforce constitutional or statutory rights.

- (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.
- (2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.
- (3) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees.

History: En. Sec. 8, Ch. 348, L. 2015.

2-6-1010 and 2-6-1011 reserved.

2-6-1012. Management of public records — disposal and destruction.

- (1) (a) Each public officer is responsible for properly managing the public records within the public officer's possession or control through an established records management plan that satisfies the requirements of this chapter.
- (b) Executive branch agencies shall manage public records according to the provisions of

Title 2, chapter 6, part 11, and the rules and guidelines established by the secretary of state, the state records committee, and the Montana historical society.

- (c) Local governments shall manage public records according to the provisions of Title 2, chapter 6, part 12, and the rules and guidelines established by the secretary of state, the local government records committee, and the Montana historical society.
 - (d) Pursuant to 5-2-503 and 5-11-105, the legislative council shall administer the records management plan for the legislative branch. The legislative branch shall cooperate with the secretary of state, the state records committee, the local government records committee, and the Montana historical society in the development, implementation, and administration of the legislative records management plan using Title 2, chapter 6, part 11, as guidance.
 - (e) The judicial branch shall establish a records management plan. The judicial branch may seek assistance from the secretary of state, the state records committee, the local government records committee, and the Montana historical society regarding development, implementation, and administration of the judicial records management plan.
- (2) When a public record has reached the end of its retention period, the public officer shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

History: En. Sec. 6, Ch. 348, L. 2015.

2-6-1013. Preservation of public records — possession of public records.

- (1) All public records are and remain the property of the public agency possessing the records. The public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this chapter.
- (2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or employee any public records that pertain to that public office, the current public officer or employee may file a complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public records still in the outgoing public officer or employee's possession to the current public officer or employee.

History: En. Sec. 7, Ch. 348, L. 2015.

2-6-1014. Protection and storage of essential records.

- (1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained.
- (2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

History: En. Sec. 10, Ch. 348, L. 2015.

Cross-References

Preservation of records — state archives, Title 22, ch. 3, part 2.

Administrative Rules

ARM 44.14.101 Records retained on digital media.

ARM 44.14.106 Delegation authority for disposal of public records.

ARM 44.14.310 Fees for records center services.

ARM 44.14.311 Fees for records center boxes.

ARM 44.14.312 Fees for imaging services.

2-6-1015 and 2-6-1016 reserved.

2-6-1017. Prohibition on dissemination or use of distribution lists — exceptions — penalties.

- (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:
 - (a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and
 - (b) a list of persons prepared by a public agency may not be used as a distribution list except by the public agency or another public agency without first securing the permission of those on the list.
- (2) As used in this section, “distribution list” means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.
- (3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.
- (4) This section does not apply to the lists of:
 - (a) registered electors and the new voter lists provided for in 13-2-115;
 - (b) the names of employees governed by Title 39, chapter 31;
 - (c) persons holding driver’s licenses or Montana identification cards provided for under 61-5-127;
 - (d) persons holding professional or occupational licenses governed by Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73, and Title 50, chapters 39, 72, 74, and 76; or
 - (e) persons certified as claims examiners under 39-71-320.
- (5) This section does not prevent an agency from providing a list to persons providing preclicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.
- (6) This section does not apply to the right of access by Montana law enforcement agencies.
- (7) This section does not apply to the secretary of state’s electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.
- (8) This section does not apply to the use by the public employees’ retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.
- (9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

- (10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.
- (11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 11, Ch. 348, L. 2015; amd. Sec. 1, Ch. 51, L. 2019; amd. Sec. 1, Ch. 147, L. 2019.

2-6-1018 and 2-6-1019 reserved.

2-6-1020. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited.

- (1) This section may be cited as the “Gus Barber Antisecrecy Act”.
- (2) As used in this section, “public hazard” means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in 27-1-106.
- (3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.
- (4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.
- (5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.
- (6) This section does not apply to:
 - (a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;
 - (b) other information that is confidential under state or federal law; or
 - (c) a health care provider, as defined in 27-6-103.
- (7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.
- (8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.
- (9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

History: En. Sec. 12, Ch. 348, L. 2015.

Part 11

Executive Branch Records

Part Cross-References

Right of department head to access to department's agencies and records before assuming position, 2-15-113.

Part Administrative Rules

Title 44, chapter 14, ARM Records and information management.

2-6-1101. Secretary of state — powers and duties — rulemaking authority.

- (1) To ensure the proper management and safeguarding of public records, the secretary of state shall:
 - (a) establish guidelines based on accepted industry standards for managing public records;
 - (b) upon request of another executive branch agency, review, analyze, and make recommendations regarding executive branch agency filing systems and procedures;
 - (c) operate the state records center for the purpose of storing and servicing public records not retained in office space;
 - (d) provide information and training materials for all phases of efficient and effective records management;
 - (e) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies;
 - (f) consult with the department of administration pursuant to 2-6-1102;
 - (g) adopt rules regarding management of public records;
 - (h) adopt rules to implement the objectives of the state records committee and local government records committee; and
 - (i) upon request, assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and provide services similar to those available to the executive branch.
- (2) In addition to the requirements under subsection (1), the secretary of state may operate a central microfilm unit to microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state.

History: En. Sec. 13, Ch. 348, L. 2015.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-6-1102. Department of administration — powers and duties.

- (1) To ensure compatibility with the information technology systems of state government and to promote adherence to records management principles and best practices, the department of administration, in consultation with the secretary of state, shall establish standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.
- (2) The department of administration, in consultation with the secretary of state, shall approve all acquisitions of executive branch agency records management equipment or systems used to electronically capture, store, or retrieve public records through comput-

erized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

- (3) The department of administration is responsible for the management and operation of equipment, systems, facilities, and processes integral to the department's central computer center and statewide telecommunications system.

History: En. Sec. 14, Ch. 348, L. 2015.

Administrative Rules

ARM 44.14.101 Records retained on digital media.

2-6-1103. Agency records management duties. Each department head shall administer the executive branch agency's records management function and shall:

- (1) coordinate all aspects of the agency records management function in accordance with procedures prescribed by the secretary of state and the state records committee;
- (2) analyze records inventory data and examine and compare all inventories within the agency to minimize duplication of records;
- (3) review and approve records disposal requests for submission to the retention and disposition subcommittee;
- (4) review established records retention schedules to ensure they are complete and current and make recommendations to the secretary of state and the state records committee regarding minimal retentions for all copies of public records within the agency;
- (5) incorporate records management requirements into the agency information technology plan provided for in 2-17-523;
- (6) ensure that all agency employees receive appropriate and ongoing records management training; and
- (7) after considering guidance from the state records committee regarding records manager qualifications, officially designate a qualified agency records manager to manage the functions provided for in this section.

History: En. Sec. 21, Ch. 348, L. 2015.

2-6-1104 through 2-6-1106 reserved.

2-6-1107. State records committee — composition and meetings.

- (1) There is a state records committee composed of:
 - (a) representatives of:
 - (i) the department of administration;
 - (ii) the legislative auditor;
 - (iii) the attorney general;
 - (iv) the secretary of state;
 - (v) the Montana historical society;
 - (vi) the governor;
 - (vii) the clerk of the supreme court; and
 - (viii) the state chief information officer; and
 - (b) five members representing executive branch agencies designated pursuant to subsections (4) and (5).
- (2) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.
- (3) The committee members representing the agencies in subsection (1)(a) are designated by the heads of the respective agencies, and their appointments must be submitted in writ-

ing to the secretary of state. These committee members serve at the pleasure of the heads of their respective agencies.

- (4) To implement subsection (1)(b), the committee members in subsection (1)(a) shall develop a rotation by which each of the executive branch agencies is designated to select a representative to serve a 2-year term as a committee member. The secretary of state shall adopt the rotation by administrative rule.
- (5) The committee shall establish guidelines for the heads of executive branch agencies in appointing representatives to ensure the executive branch representatives provide a balance of perspectives from records management, information technology, and legal professionals.
- (6) The committee shall meet at least quarterly.
- (7) Committee members shall serve without additional salary but are entitled to reimbursement for travel expenses incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Expenses must be paid from the appropriations made for operation of their respective agencies.

History: En. Sec. 15, Ch. 348, L. 2015.

Administrative Rules

ARM 44.14.101 Records retained on digital media.

2-6-1108. State records committee — duties and responsibilities. The purpose of the state records committee is to act as a resource for executive branch agencies and others by staying at the forefront of records management best practices. The committee shall:

- (1) gather and disseminate information on all phases of records management;
- (2) advise the secretary of state in developing records management standards, guidelines, and training materials;
- (3) develop guidelines to help agencies identify, maintain, and secure their essential records;
- (4) serve as a forum for continuing collaboration among records management, information technology, and legal professionals throughout state agencies;
- (5) make recommendations to the secretary of state for rulemaking regarding public records management;
- (6) regularly review existing public records laws and make recommendations to the secretary of state regarding pursuing statutory change; and
- (7) report biennially to the governor and, as provided in 5-11-210, the legislature on the activities of the committee, improvements in records management in state government, aspects of records management requiring further improvement, and committee recommendations and plans for further improvement.

History: En. Sec. 16, Ch. 348, L. 2015.

2-6-1109. Retention and disposition subcommittee — approval required for record disposal.

- (1) There is a subcommittee of the state records committee to be known as the retention and disposition subcommittee. The subcommittee is composed of the members of the state records committee who represent the following offices:
 - (a) the department of administration;
 - (b) the legislative auditor;
 - (c) the attorney general;
 - (d) the secretary of state; and
 - (e) the Montana historical society.

- (2) The subcommittee shall approve, modify, or disapprove the recommendations on retention schedules of all public records.
- (3) Except as provided in subsection (4), no public record may be disposed of or destroyed without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction must be submitted to the subcommittee by the agency concerned.
- (4) The subcommittee may by unanimous approval establish categories of records for which no disposal request is required if those records are retained for the designated retention period.

History: En. Sec. 17, Ch. 348, L. 2015.

2-6-1110 and 2-6-1111 reserved.

2-6-1112. Historic records — Montana historical society — powers and duties. To ensure the proper management and safeguarding of historic records, the Montana historical society shall:

- (1) establish and operate the state archives as authorized by appropriation for the purpose of storing, preserving, and providing access to historic records transferred to the custody of the state archives;
- (2) in cooperation with the secretary of state, the local government records committee, and the state records committee, establish guidelines to inventory, catalog, retain, transfer, and provide access to all historic records;
- (3) maintain and enforce restrictions on access to historic records in the custody of the state archives in accordance with the provisions of this part; and
- (4) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate records and records considered to have no historical value.

History: En. Sec. 18, Ch. 348, L. 2015.

Cross-References

Preservation of records — state archives, Title 22, ch. 3, part 2.

Administrative Rules

Title 10, chapters 120 and 121, ARM Montana Historical Society.

Title 44, chapter 14, subchapter 1, ARM Records retention.

ARM 44.14.101 Records retained on digital media.

2-6-1113. Constitutional officer records — Montana historical society.

- (1) All constitutional officer records are the property of the state. The records must be delivered by outgoing constitutional officers to their successors, who shall preserve, store, transfer, destroy, or dispose of and otherwise manage them in accordance with the provisions of this section.
- (2) Within 2 years after taking office as a constitutional officer, the current constitutional officer shall consult with staff members of the Montana historical society and transfer to the Montana historical society all of the constitutional officer records of the prior officeholder that are not necessary to the current operation of that office and are considered worthy of preservation.
- (3) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, shall review constitutional officer records and isolate any items of a purely personal nature. The personal papers are not subject to this section, but they may

be deposited along with the constitutional officer records at the Montana historical society at the constitutional officer's discretion.

- (4) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, may restrict access to certain segments of that officer's records. Restrictions may not be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.
- (5) Any question concerning the transfer or other status of constitutional officer records arising between the state archives and a constitutional officer's office must be decided by a four-fifths vote of the members of the retention and disposition subcommittee provided for in 2-6-1109.

History: En. Sec. 19, Ch. 348, L. 2015.

Cross-References

Right to examine public documents subject to demand for individual privacy, Art. II, sec. 9,

Mont. Const.

Ownership of public records, 2-6-1013.

Records of Secretary of State, 2-15-406.

Administrative Rules

Title 10, chapters 120 and 121, ARM Montana Historical Society.

Title 44, chapter 14, subchapter 1, ARM Records retention.

2-6-1114. Permanent records — agency responsibilities — state records center.

- (1) All permanent records no longer required in the current operation of the office where they are made or kept and all records of each agency or activity of the executive branch of state government that has been abolished or discontinued must be maintained by the agency or transferred to the state records center in accordance with approved records retention schedules.
- (2) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is merely a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. The state records center may charge fees to cover the cost of records storage and servicing.
- (3) Prior to transferring a permanent record to the state records center, the transferring agency shall consult with the state archivist to determine whether the record is also a historic record. If the record is found to be a historic record, it must be transferred to the Montana historical society in accordance with the provisions of 2-6-1112.

History: En. Sec. 20, Ch. 348, L. 2015.

Administrative Rules

Title 44, chapter 14, subchapter 1, ARM Records retention.

ARM 44.14.101 Records retained on digital media.

Part 12

Local Government Records

Part Administrative Rules

Title 44, chapter 14, subchapter 2, ARM Local government records retention.

2-6-1201. Local government records committee — composition and meetings.

- (1) There is a local government records committee.
- (2) The committee consists of the following eight members:
 - (a) the state archivist;
 - (b) the state records manager;
 - (c) a representative of the department of administration;
 - (d) two local government records managers appointed by the director of the Montana historical society;
 - (e) two local government records managers appointed by the secretary of state; and
 - (f) a person representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.
- (3) Committee members subject to appointment shall hold office for a period of 2 years beginning January 1 of the year following their appointment.
- (4) Vacancies must be filled in the same manner they were filled originally.
- (5) The committee shall elect a presiding officer and a vice presiding officer.
- (6) The committee shall meet at least twice a year upon the call of the secretary of state or the presiding officer.
- (7) Except for the member appointed in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

History: En. Sec. 22, Ch. 348, L. 2015.

2-6-1202. Local government records committee — duties and responsibilities. The local government records committee shall:

- (1) approve, modify, or disapprove proposals for local government records retention and disposition schedules;
- (2) appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist, one of the local government records managers, and the representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule as necessary.

- (3) establish a retention and disposition schedule for categories of records for which a disposal request is not required. The local government records committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.
- (4) develop guidance for local governments to identify, maintain, and secure their essential records;
- (5) respond to requests for technical advice on matters relating to local government records; and
- (6) provide leadership and coordination in matters affecting the records of multiple local governments.

History: En. Sec. 23, Ch. 348, L. 2015.

Administrative Rules

Title 44, chapter 14, subchapter 2, ARM Local government records retention.

2-6-1203 and 2-6-1204 reserved.

2-6-1205. Disposal of local government public records prohibited prior to offering — central registry — notification.

- (1) A local government public record more than 10 years old may not be destroyed unless it is first offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.
- (2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 60 days prior to disposal.
- (3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).
 - (b) All expenses for the removal of claimed records must be paid by the entity claiming the records.
 - (c) The local government records committee shall establish procedures by which public records must be offered and claimed pursuant to this section.
 - (d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and allow the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection (3)(d) and the records committee's notice to the entities listed on the registry fulfill the notification requirements of this section.

History: En. Sec. 24, Ch. 348, L. 2015.

Parts 13 and 14 reserved

Part 15

State Agency Protection of Personal Information

Part Collateral References

New Frontiers in Education and Local Government: Electronic Records Management, 2014 Final Report on the Activities of the Education and Local Government Interim Committee, Mont. Leg. Serv. Div., pp. 9-10.

2-6-1501. Definitions. As used in this part, the following definitions apply:

- (1) “Breach of the security of a data system” or “breach” means the unauthorized acquisition of computerized data that:
 - (a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and
 - (b) causes or is reasonably believed to cause loss or injury to a person.
- (2) “Individual” means a human being.
- (3) “Person” means an individual, a partnership, a corporation, an association, or a public organization of any character.
- (4) (a) “Personal information” means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:
 - (i) a social security number;
 - (ii) a driver’s license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa;
 - (iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person’s financial account;
 - (iv) medical record information as defined in 33-19-104;
 - (v) a taxpayer identification number; or
 - (vi) an identity protection personal identification number issued by the United States internal revenue service.
- (b) The term does not include publicly available information from federal, state, local, or tribal government records.
- (5) “Redaction” means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.
- (6) (a) “State agency” means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.
- (b) The term does not include an entity of the judicial branch.
- (7) “Third party” means:
 - (a) a person with a contractual obligation to perform a function for a state agency; or
 - (b) a state agency with a contractual or other obligation to perform a function for another state agency.

History: En. Sec. 25, Ch. 348, L. 2015; amd. Sec. 61, Ch. 348, L. 2015.

2-6-1502. Protection of personal information — compliance — extensions.

- (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.
- (2) The procedures must include measures to:
 - (a) eliminate the unnecessary use of personal information;
 - (b) identify the person or state agency authorized to have access to personal information;
 - (c) restrict access to personal information by unauthorized persons or state agencies;
 - (d) identify circumstances in which redaction of personal information is appropriate;
 - (e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;
 - (f) eliminate the unnecessary storage of personal information on portable devices; and
 - (g) protect data containing personal information if that data is on a portable device.
- (3) Except as provided in subsection (4), each state agency that is created after October 1, 2015, shall complete the requirements of this section within 1 year of its creation.
- (4) The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

History: En. Sec. 26, Ch. 348, L. 2015.

2-6-1503. Notification of breach of security of data system.

- (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.
- (b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.
- (2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:
 - (i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and
 - (ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).
- (b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification

if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

- (3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.
- (4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:
 - (a) an information security policy designed to safeguard personal information; and
 - (b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).
- (5) A state agency or third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration and to the attorney general's consumer protection office an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer and the consumer protection office.

History: En. Sec. 27, Ch. 348, L. 2015; amd. Sec. 62, Ch. 348, L. 2015.

CHAPTER 7

STUDIES, REPORTS, AND AUDITS

Part 5

Audits of Political Subdivisions

Part Administrative Rules

Title 2, chapter 4, subchapter 4, ARM Administrative financial services — Single Audit Act.

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

- (1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.
- (2) "Board" means the Montana board of public accountants provided for in 2-15-1756.
- (3) "Department" means the department of administration.
- (4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

- (b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.
- (5) “Financial report” means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.
- (6) “Independent auditor” means:
 - (a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or
 - (b) a certified public accountant who meets the standards in subsection (6)(a).
- (7) (a) “Local government entity” means a county, city, district, or public corporation that:
 - (i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;
 - (ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and
 - (iii) receives local, state, or federal financial assistance.
 (b) Local government entities include but are not limited to:
 - (i) airport authority districts;
 - (ii) cemetery districts;
 - (iii) counties;
 - (iv) county housing authorities;
 - (v) county road improvement districts;
 - (vi) county sewer districts;
 - (vii) county water districts;
 - (viii) county weed management districts;
 - (ix) drainage districts;
 - (x) fire companies;
 - (xi) fire districts;
 - (xii) fire service areas;
 - (xiii) hospital districts;
 - (xiv) incorporated cities or towns;
 - (xv) irrigation districts;
 - (xvi) mosquito districts;
 - (xvii) municipal fire departments;
 - (xviii) municipal housing authority districts;
 - (xix) port authorities;
 - (xx) solid waste management districts;
 - (xxi) rural improvement districts;
 - (xxii) school districts, including a district’s extracurricular funds;
 - (xxiii) soil conservation districts;
 - (xxiv) special education or other cooperatives;
 - (xxv) television districts;
 - (xxvi) urban transportation districts;
 - (xxvii) water conservancy districts;
 - (xxviii) regional resource authorities; and
 - (xxix) other miscellaneous and special districts.
- (8) “Revenues” means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 489, L. 1991; amd. Sec. 2, Ch. 7, L. 2001; amd. Sec. 33, Ch. 278, L. 2001; amd. Sec. 8, Ch. 483, L. 2001; amd. Sec. 3, Ch. 114, L. 2003; amd. Sec. 1, Ch. 449, L. 2007; amd. Sec. 24, Ch. 351, L. 2009; amd. Sec. 1, Ch. 169, L. 2015.

2-7-502. Short title — purpose.

- (1) This part may be cited as the “State of Montana Single Audit Act”.
- (2) The purposes of this part are to:
 - (a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;
 - (b) establish uniform requirements for financial reports and audits of local government entities;
 - (c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;
 - (d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;
 - (e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;
 - (f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and
 - (g) promote the efficient and effective use of audit resources.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517; amd. Sec. 2, Ch. 489, L. 1991.

2-7-503. Financial reports and audits of local government entities.

- (1) (a) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.
- (b) The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.
- (2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.
- (3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report that is in excess of \$500,000 and that is also in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity’s preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

- (b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.
- (4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.
- (5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.
- (6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.
- (7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979; amd. Sec. 1, Ch. 573, L. 1981; amd. Sec. 1, Ch. 49, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 84, L. 1985; amd. Sec. 1, Ch. 565, L. 1985; amd. Sec. 1, Ch. 673, L. 1985; amd. Sec. 1, Ch. 140, L. 1989; amd. Sec. 3, Ch. 489, L. 1991; amd. Sec. 5, Ch. 430, L. 1995; amd. Sec. 1, Ch. 91, L. 1997; amd. Sec. 1, Ch. 458, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 34, Ch. 278, L. 2001; amd. Sec. 1, Ch. 272, L. 2007; amd. Sec. 1, Ch. 289, L. 2011; amd. Sec. 1, Ch. 11, L. 2015; amd. Sec. 1, Ch. 262, L. 2015; amd. Sec. 1, Ch. 278, L. 2017; amd. Sec. 1, Ch. 439, L. 2017.

2-7-504. Accounting methods.

- (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.
- (2) The rules adopted by the department must be in accordance with:
 - (a) generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor; or
 - (b) a small government financial reporting framework that is defined by the department and derived from the generally accepted accounting principles referenced in subsection (2)(a).

History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530; amd. Sec. 1, Ch. 1, Sp. L. June 1989; amd. Sec. 1, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 489, L. 1991; amd. Sec. 6, Ch. 430, L. 1995; amd. Sec. 35, Ch. 278, L. 2001; amd. Sec. 1, Ch. 73, L. 2019.

2-7-505. Audit scope and standards.

- (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.
- (2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.
- (3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of custodial funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.

History: En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518; amd. Sec. 2, Ch. 573, L. 1981; amd. Sec. 5, Ch. 489, L. 1991; amd. Sec. 36, Ch. 278, L. 2001; amd. Sec. 1, Ch. 185, L. 2019.

2-7-506. Audit by independent auditor.

- (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.
- (2) The department, in consultation with the board, shall adopt rules governing the:
 - (a) criteria for the selection of the independent auditor;
 - (b) procedures and qualifications for placing applicants on the roster;
 - (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and
 - (d) fees payable to the department for application for placement on the roster.
- (3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.
- (4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.
- (5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department may designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

History: En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525; amd. Sec. 3, Ch. 573, L. 1981; amd. Sec. 1, Ch. 260, L. 1989; amd. Sec. 6, Ch. 489, L. 1991; amd. Sec. 1, Ch. 146, L. 2011.

2-7-507. Duty of officers to aid in audit. The officers and employees of the local government entities referred to in this part shall provide all reasonable facilities for the audit and shall furnish all information to the independent auditor necessary for the conduct of the audit.

History: En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527; amd. Sec. 7, Ch. 489, L. 1991.

2-7-508. Power to examine books and papers. The independent auditor may examine any books, papers, accounts, and documents in the office or possession of any local government entity.

History: En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528; amd. Sec. 8, Ch. 489, L. 1991.

2-7-509. Audits of school-related organizations — costs — criteria.

- (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).
- (2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:
 - (a) the audit provided for in subsection (1); and
 - (b) pay the costs of the audit.
- (3) An audit of an organization performed under this section must determine if:
 - (a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;
 - (b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;
 - (c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;
 - (d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and
 - (e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

History: En. Sec. 1, Ch. 678, L. 1991.

2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy.

- (1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.
- (2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers, vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.
- (3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of office and the governing body of the local government entity shall appoint a qualified person to the office pending completion of the audit.

- (4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.
- (5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must be referred to the county attorney.

History: En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526; amd. Sec. 1, Ch. 43, L. 1981; amd. Sec. 9, Ch. 489, L. 1991; amd. Sec. 52, Ch. 61, L. 2007.

Cross-References

Prosecutorial duty of County Attorney, 7-4-2712.

2-7-512. Exit review conference. Upon completion of each audit, the independent auditor is required to hold with the appropriate officials an exit review conference in which the audit results must be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519; amd. Sec. 10, Ch. 489, L. 1991.

2-7-513. Content of audit report and financial report.

- (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.
- (2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

History: En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520; amd. Sec. 11, Ch. 489, L. 1991; amd. Sec. 7, Ch. 430, L. 1995; amd. Sec. 37, Ch. 278, L. 2001.

Administrative Rules

Title 2, chapter 4, subchapter 4, ARM Administrative financial services — Single Audit Act.

2-7-514. Filing of audit report and financial report.

- (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.
- (2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts, except that a local

government meeting the requirements of 2-7-503(3)(b) shall pay only the administrative fee set by the department in rule.

- (3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3); amd. Sec. 1, Ch. 169, L. 1985; amd. Sec. 2, Ch. 140, L. 1989; amd. Sec. 12, Ch. 489, L. 1991; amd. Sec. 1, Ch. 509, L. 1995; amd. Sec. 2, Ch. 439, L. 2017.

2-7-515. Actions by governing bodies.

- (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall submit to the department a corrective action plan detailing what action or actions they plan to take on any findings or recommendations contained in the audit report. If no findings or recommendations appear in the audit report, notification is not required. If the local government entity is a school district, the local government entity shall also send a copy of the corrective action plan to the superintendent of public instruction.
- (2) Notification to the department shall include a statement by the governing bodies that noted findings or recommendations for improvement have been acted on by adoption as recommended, adoption with modification, or rejection.
- (3) Within 30 days of receipt of the corrective action plan, the department shall notify the entity of the acceptance or rejection of the corrective measures. If the department and the local government entity fail to agree on the corrective measures, a conference between the parties must be held within 30 days of the department's decision not to accept the local government entity's corrective measures. Failure to resolve significant findings or implement corrective measures must result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.
- (4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department shall refer the case to the attorney general to prosecute the case at the expense of the local government entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522; amd. Sec. 1, Ch. 128, L. 1991; amd. Sec. 13, Ch. 489, L. 1991; amd. Sec. 1, Ch. 268, L. 2019.

2-7-516. Audit fees.

- (1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.
- (2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524; amd. Sec. 4, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 489, L. 1991.

2-7-517. Penalties — rules to establish fine.

- (1) Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.
- (2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.
- (3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.
- (4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.
- (5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.

History: En. Sec. 6, Ch. 573, L. 1981; amd. Sec. 3, Ch. 3, L. 1985; amd. Sec. 15, Ch. 489, L. 1991; amd. Sec. 7, Ch. 42, L. 1997; amd. Sec. 2, Ch. 289, L. 2011; amd. Sec. 3, Ch. 173, L. 2017.

2-7-518. Deposit of fees. All fees received from local government entities must be deposited in the enterprise fund to the credit of the department of administration for administration of Title 2, chapter 7, part 5.

History: En. Sec. 7, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 489, L. 1991; amd. Sec. 9, Ch. 483, L. 2001.

2-7-519 and 2-7-520 reserved.

2-7-521. Publication.

- (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.
- (b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

- (2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:
 - (a) the summary of significant findings provided for in subsection (1)(b); and
 - (b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.
- (3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.
- (4) Publication costs must be borne by the audited local government entity.

History: En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523; amd. Sec. 1, Ch. 386, L. 1983; amd. Sec. 3, Ch. 140, L. 1989; amd. Sec. 1, Ch. 607, L. 1989; amd. Sec. 17, Ch. 489, L. 1991.

Cross-References

County advertising — contract with newspaper within county, 18-7-411.

2-7-522. Report review.

- (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.
- (2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.
- (3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.
- (4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.
- (5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.
- (6) The department must have access in its office to the working papers of the independent auditor.

History: En. Sec. 18, Ch. 489, L. 1991.

2-7-523. Cause of action — failure to file reports and audits or resolve findings.

- (1) If a local government entity fails to file an annual financial report with the department as required by 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines, a person identified in subsection (2) of this section who has received a written determination from the department under 2-7-524(3)(c) or (4)(b) may bring a cause of

action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

- (2) The following parties may bring a cause of action under the provisions of subsection (1):
 - (a) any person who pays property taxes to the local government entity;
 - (b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to the local government entity;
 - (c) any person residing within the jurisdictional boundaries of the local government entity who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as set forth in subsection (1).
- (3) The cause of action must be filed in the district court in the county where the local government entity is located.
- (4) In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local government entity, or compelling a mandatory duty required under this part that is imposed on a state or local government officer or local government entity. If a party identified in subsection (2) prevails in an action brought under this section, that party must be awarded costs and reasonable attorney fees.

History: En. Sec. 4, Ch. 268, L. 2019.

2-7-524. Filing of claims against local government entity — disposition by department as prerequisite.

- (1) All claims against a local government entity for failure to file an annual financial report with the department as required by 2-7-503(1), failure to complete and submit an audit or financial review to the department as required by 2-7-503(3), or failure to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines must be presented in writing to the department.
- (2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the local government entity. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled until a written determination is issued under subsection (3).
- (3) The department must review the claim and issue one of the following determinations in writing within 60 days after the claim is presented to the department:
 - (a) the local government entity has not violated the requirements of this part for a period of 2 years from the applicable deadlines;
 - (b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines, and the department will initiate further technical assistance to help the local government entity come into compliance with this part within 6 months; or
 - (c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines.
- (4) If the department issues a written determination under subsection (3)(b), within 6 months the department must provide the complainant with a final determination that either:
 - (a) the local government entity has come into compliance with the provisions of this part; or
 - (b) there is sufficient evidence of the violations of the requirements of this part.

- (5) A complainant must receive a written determination from the department under subsection (3)(c) or (4)(b) before proceeding to district court in accordance with 2-7-523.
- (6) The failure of the department to issue a written determination of a claim within 60 days after the claim is presented to the department must be considered a written determination under subsection (3)(c) for purposes of this section.

History: En. Sec. 5, Ch. 268, L. 2019.

CHAPTER 9

LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 1

Liability Exposure

Part Case Notes

*County Attorney Immunity for Handling of Streambed Preservation and Stalking Complaints — Summary Judgment Proper: The Madison County Attorney filed a misdemeanor complaint against Rosenthal for a possible streambed preservation violation, but later moved to dismiss the complaint when the state's expert was not confident that a violation had occurred. The County Attorney also forwarded a stalking complaint against Rosenthal to the Attorney General's office because of a possible conflict of interest. Rosenthal subsequently filed a malicious prosecution complaint and also claimed intentional and negligent emotional distress. The District Court determined that the prosecutor's conduct was within the scope of his authority and that he was entitled to absolute prosecutorial immunity and granted summary judgment. On appeal, the Supreme Court affirmed. The prosecutor properly exercised discretion both in filing the streambed protection complaint and then in dismissing the complaint when faced with the state expert's equivocation and was entitled to absolute immunity for this conduct. Regarding the handling of the stalking complaint, the allegedly injurious conduct arguably fell outside the County Attorney's quasi-judicial functions, so the court applied the test in *Sacco v. High Country Independent Press, Inc.*, 271 M 209, 896 P2d 411 (1995), to determine whether the qualified immunity shield applied. Rosenthal asserted no violation of a clearly established constitutional right, so qualified immunity barred the suit. At the very least, the County Attorney was entitled to qualified immunity for his actions, and the District Court did not err in determining that, as a matter of law, the County Attorney was entitled to immunity, either absolute or qualified, for his actions in prosecuting the complaints against Rosenthal. *Rosenthal v. Madison County*, 2007 MT 277, 339 M 419, 170 P3d 493 (2007), following *Losleben v. Oppedahl*, 2004 MT 5, 319 M 269, 83 P3d 1271 (2004).*

2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

- (1) "Claim" means any claim against a governmental entity, for money damages only, that any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages, are considered one claim.

- (2) (a) “Employee” means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation.
- (b) The term does not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.
- (3) “Governmental entity” means the state and political subdivisions.
- (4) “Personal injury” means any injury resulting from libel, slander, malicious prosecution, or false arrest and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.
- (5) “Political subdivision” means any county, city, municipal corporation, school district, special improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement between two or more political subdivisions.
- (6) “Property damage” means injury or destruction to tangible property, including loss of use of the property, caused by an occurrence for which the state may be held liable.
- (7) “State” means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3); amd. Sec. 3, Ch. 675, L. 1983; amd. Sec. 1, Ch. 389, L. 1985; amd. Secs. 1, 3, Ch. 22, Sp. L. June 1986; amd. Sec. 54, Ch. 61, L. 2007; amd. Sec. 2, Ch. 262, L. 2015.

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

Attorney General’s Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

2-9-103. Actions under invalid law or rule — same as if valid — when.

- (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the governmental entity is not civilly liable in any action in which the individuals or governmental entity would not have been liable if the law had been valid.
- (2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the gov-

ernmental entity is not civilly liable in any action in which liability would not attach if the rule or ordinance had been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979; amd. Sec. 55, Ch. 61, L. 2007.

2-9-104. Repealed. Sec. 4, Ch. 675, L. 1983.

History: En. 82-4334 by Sec. 8, Ch. 189, L. 1977; R.C.M. 1947, 82-4334(1), (2); amd. Sec. 2, Ch. 425, L. 1979.

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.

2-9-106. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 1, Ch. 675, L. 1983.

2-9-107. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 2, Ch. 675, L. 1983; amd. Sec. 2, Ch. 389, L. 1985.

2-9-108. Limitation on governmental liability for damages in tort.

- (1) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.
- (2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. This subsection does not create an exception from the dollar limitations provided for in subsection (1).
- (3) An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: En. Sec. 2, Ch. 22, Sp. L. June 1986; amd. Sec. 1, Ch. 337, L. 1997.

2-9-109 and 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions.

- (1) As used in this section:
 - (a) the term “governmental entity” means only the state, counties, municipalities, school

districts, and any other local government entity or local political subdivision vested with legislative power by statute;

- (b) the term “legislative body” means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;
- (c) (i) the term “legislative act” means:
 - (A) actions by a legislative body that result in creation of law or declaration of public policy;
 - (B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or
 - (C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);
- (ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.
- (2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.
- (3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.
- (4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.
- (5) The immunity provided for in this section does not extend to:
 - (a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or
 - (b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328; amd. Sec. 1, Ch. 818, L. 1991; amd. Sec. 1, Ch. 821, L. 1991.

2-9-112. Immunity from suit for judicial acts and omissions.

- (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.
- (2) A member, officer, or agent of the judiciary is immune from suit for damages arising from the lawful discharge of an official duty associated with judicial actions of the court.
- (3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329; amd. Sec. 56, Ch. 61, L. 2007.

2-9-113. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2 Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state.

- (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.
- (2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.
- (3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.
- (4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.
- (5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: (1) thru (3) En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5) En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.

Attorney General's Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

2-9-202. Apportionment of costs — creation of deductible reserve.

- (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs must be paid to the department subject to appropriations by the legislature.
- (2) The department, if it elects to use a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish the deductible reserves.
- (3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers

should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund must be used by the department to pay claims under parts 1 through 3 of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of the fund must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

- (4) Money in reserve funds established under this section that is not needed to meet expected expenditures must be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305; amd. Sec. 3, Ch. 703, L. 1985; amd. Sec. 1, Ch. 532, L. 1997.

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance.

- (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) and (2)(a)(iii). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) and (2)(a)(iii) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.
- (2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.
- (3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.
- (4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.
- (5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306; amd. Sec. 1, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 68, L. 1995; amd. Sec. 1, Ch. 29, L. 2001; amd. Sec. 1, Ch. 191, L. 2005; amd. Sec. 1, Ch. 350, L. 2011; amd. Sec. 1, Ch. 48, L. 2019.

2-9-212. Political subdivision tax levy to pay contributions.

- (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the contribution for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).
- (2) (a) If a political subdivision makes contributions for group benefits under 2-18-703, the amount in excess of the base contribution as determined under 2-18-703(4)(c) for group benefits under 2-18-703 is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).
 - (i) Contributions for group benefits paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.
 - (ii) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.
- (b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.
- (c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).
- (3) (a) For the purposes of this section, “group benefits” means group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions, including flexible spending account benefits and payments in lieu of group benefits.
- (b) The term does not include casualty insurance as defined in 33-1-206, marine insurance as authorized in 33-1-209 and 33-1-221 through 33-1-229, property insurance as defined in 33-1-210, surety insurance as defined in 33-1-211, and title insurance as defined in 33-1-212.

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, 82-4309; amd. Sec. 2, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 568, L. 1991; amd. Sec. 2, Ch. 584, L. 1999; amd. Sec. 1, Ch. 511, L. 2001; amd. Sec. 1, Ch. 529, L. 2003; amd. Sec. 1, Ch. 412, L. 2009.

2-9-213 through 2-9-219 reserved.

2-9-220. Loss mitigation program — purpose.

- (1) There is a loss mitigation program administered by the department of administration.
- (2) Funds for the program must be used by the department solely for the purpose of mitigating losses generated through claims against the state related to property, automobiles, aviation, and general liability.
- (3) An agency seeking funds from the loss mitigation program shall present to the department a written request that:
 - (a) identifies the risk of loss and potential costs associated with the risk of loss;
 - (b) identifies matching funds from the agency to address or reduce the risk of loss; and
 - (c) provides a detailed explanation of how the funds will be spent to mitigate the risk of loss.
- (4) Prior to distributing funds for an agency seeking funds from the loss mitigation program, the department of administration shall review the information provided by the agency and confirm the existence of a significant risk of loss to be mitigated with the requested funds.
- (5) A distribution over \$30,000 for each written request, not including matching funds available to the agency, from the loss mitigation program to a single agency is subject to approval by the office of budget and program planning.

History: En. Sec. 1, Ch. 127, L. 2015.

Part 3

Claims and Actions

2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite.

- (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.
- (2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in writing within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.
- (3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312; amd. Sec. 1, Ch. 507, L. 1987; amd. Sec. 1, Ch. 494, L. 1991.

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

2-9-303. Compromise or settlement of claim against state.

- (1) (a) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.
- (b) All records related to a compromise or settlement of a claim against the state must be retained for a period of 20 years.
- (2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.
- (3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987; amd. Sec. 1, Ch. 172, L. 2001; amd. Sec. 1, Ch. 306, L. 2017; amd. Sec. 1, Ch. 188, L. 2019.

2-9-304. Compromise or settlement of claim against political subdivision.

- (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.
- (2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.
- (3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318; amd. Sec. 2, Ch. 111, L. 1987; amd. Sec. 1, Ch. 103, L. 1995; amd. Sec. 2, Ch. 172, L. 2001; amd. Sec. 2, Ch. 306, L. 2017.

2-9-305. Immunization, defense, and indemnification of employees.

- (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
- (2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

- (3) Upon receiving service of a summons and complaint in a noncriminal action against an employee, the employee shall give written notice to the employee's supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee who does not have a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.
- (4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee must be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).
- (5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, omission, or other actionable conduct gave rise to the claim. In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).
- (6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
 - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment;
 - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
 - (c) the employee compromised or settled the claim without the consent of the governmental entity employer; or
 - (d) the employee failed or refused to cooperate reasonably in the defense of the case.
- (7) If a judicial determination has not been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes that it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in that action holding that the employer did not have an obligation to defend the employee. The governmental entity employer does not have an obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4) En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323; amd. Sec. 1, Ch. 530, L. 1983; amd. Sec. 57, Ch. 61, L. 2007.

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

2-9-312. Renumbered 25-2-126(1) and (3). Sec. 18(2), Ch. 432, L. 1985.

2-9-313. Service of process on state. In all actions against the state arising under this chapter, the state must be named the defendant and the summons and complaint must be served on the director of the department of administration in addition to service required by Rule 4(l), M.R.Civ.P. The state shall serve an answer within 40 days after service of the summons and complaint.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979; amd. Sec. 1, Ch. 3, L. 1993.

2-9-314. Court approval of attorney fees.

- (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision of the state, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.
- (2) The district court may regulate the amount of the attorney fees in any tort claim against the state or a political subdivision of the state. In regulating the amount of the fees, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.
- (3) Attorney fees regulated under this section must be made a part of the court record and are open to the public.

- (4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney fees under this section, the attorney forfeits the right to any fees that the attorney may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1; amd. Sec. 58, Ch. 61, L. 2007.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities. A political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

- (1) insurance;
- (2) the general fund or any other funds legally available to the governing body;
- (3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment or settlement;
- (4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1); amd. Sec. 3, Ch. 213, L. 1989; amd. Sec. 1, Ch. 23, L. 1999; amd. Sec. 38, Ch. 278, L. 2001; amd. Sec. 5, Ch. 574, L. 2001.

2-9-317. No interest if judgment paid within two years — exception. Except as provided in 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2); amd. Sec. 2, Ch. 508, L. 1997.

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.

Cross-References

Execution of judgment, Title 25, ch. 13.

Prejudgment attachment, Title 27, ch. 18.

CHAPTER 16 PUBLIC OFFICERS

Part 2 Accession to Office

2-16-201. Manner of election of certain officers. The mode of election of the governor, lieutenant governor, secretary of state, state auditor, attorney general, and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R.C.M. 1921; Cal. Pol. C. Sec. 348; re-en. Sec. 111, R.C.M. 1935; amd. Sec. 22, Ch. 100, L. 1973; R.C.M. 1947, 59-203.

Cross-References

Election of officers, Art. VI, sec. 2, Mont. Const.
Elections, Title 13.

2-16-202. Title contested — salary withheld.

- (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, a warrant may not be drawn or paid for any part of the incumbent's salary until the proceedings have been finally determined.
- (2) As soon as the proceedings are instituted, the clerk of the court in which they are pending shall certify the facts to the officers whose duty it would otherwise be to draw the warrant or pay the salary.

History: En. Secs. 1040, 1041, Pol. C. 1895; re-en. Secs. 375, 376, Rev. C. 1907; re-en. Secs. 451, 452, R.C.M. 1921; Cal. Pol. C. Secs. 936, 937; re-en. Secs. 451, 452, R.C.M. 1935; R.C.M. 1947, 59-508, 59-509; amd. Sec. 99, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-203. Manner of appointments. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907; re-en. Sec. 419, R.C.M. 1921; Cal. Pol. C. Sec. 875; re-en. Sec. 419, R.C.M. 1935; R.C.M. 1947, 59-401.

2-16-204. Gubernatorial commissions.

- (1) The governor must commission:
 - (a) all officers elected by the people whose commissions are not otherwise provided for;
 - (b) all officers of the militia;
 - (c) all officers appointed by the governor or by the governor with consent of the senate;
 - (d) United States senators.
- (2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

History: En. Secs. 1002, 1003, Pol. C. 1895; re-en. Secs. 358, 359, Rev. C. 1907; re-en. Secs. 426, 427, R.C.M. 1921; Cal. Pol. C. Secs. 891, 892; re-en. Secs. 426, 427, R.C.M. 1935; R.C.M. 1947, 59-409, 59-410.

2-16-205. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907; re-en. Sec. 428, R.C.M. 1921; Cal. Pol. C. Sec. 893; re-en. Sec. 428, R.C.M. 1935; R.C.M. 1947, 59-411.

2-16-206 through 2-16-210 reserved.

2-16-211. Oaths — form — before whom — when.

- (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."
- (2) No other oath, declaration, or test must be required as a qualification for any office or public trust.
- (3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: (1), (2)En. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R.C.M. 1921; Cal. Pol. C. Sec. 904; re-en. Sec. 430, R.C.M. 1935; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973; Sec. 59-413, R.C.M. 1947; (3)En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907; re-en. Sec. 433, R.C.M. 1921; Cal. Pol. C. Sec. 908; re-en. Sec. 433, R.C.M. 1935; Sec. 59-416, R.C.M. 1947; R.C.M. 1947, 59-413, 59-416.

2-16-212. Filing.

- (1) Unless a different time is prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of election or appointment or before the expiration of 15 days from the commencement of the term of office when a notice of election or appointment has not been given.
- (2) An oath of office, certified by the officer before whom the oath was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:
 - (a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;
 - (b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

History: (1)En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907; re-en. Sec. 432, R.C.M. 1921; Cal. Pol. C. Sec. 907; re-en. Sec. 432, R.C.M. 1935; Sec. 59-415, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-415, 59-417(1), (2); amd. Sec. 100, Ch. 61, L. 2007.

2-16-213. Term of office — holdover — assumption of office.

- (1) An office for which the duration is not fixed by law is held at the pleasure of the appointing authority.
- (2) An officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified.
- (3) Notwithstanding the provisions of subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer even though the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant.

History: En. Secs. 993, 994, Pol. C. 1895; re-en. Secs. 354, 355, Rev. C. 1907; re-en. Secs. 422, 423, R.C.M. 1921; Cal. Pol. C. Secs. 878, 879; re-en. Secs. 422, 423, R.C.M. 1935; R.C.M. 1947, 59-405, 59-406; amd. Sec. 2, Ch. 83, L. 1983; amd. Sec. 101, Ch. 61, L. 2007.

2-16-214. Definition of current term for purposes of term limits. As used in Article IV, section 8, of the Montana constitution, “current term” means the term served after regular election to a full term to an office and does not include time served in an appointed or an elected capacity in an office to finish the term of the original incumbent after a vacancy has occurred.

History: En. Sec. 1, Ch. 144, L. 2003.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 1

General Provisions

2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

- (1) “Agency” means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.
- (2) “Base salary” means the base hourly pay rate annualized paid to an employee, excluding overtime and longevity.
- (3) “Benchmark” means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to classify the occupation.
- (4) “Blue-collar pay plan” means a strictly negotiated classification and pay plan consisting of unskilled or skilled labor, trades, and crafts occupations.
- (5) “Board” means the board of personnel appeals established in 2-15-1705.
- (6) “Broadband classification plan” means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.
- (7) “Broadband pay plan” means a pay plan using a pay hierarchy of broad pay bands based on a classification plan, including market midpoint and occupational wage ranges.
- (8) “Compensation” means the annual or hourly wage or salary and includes the longevity allowance provided in 2-18-304 and leave and holiday benefits provided in part 6 of this chapter.

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- (9) “Competencies” means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a position.
 - (10) “Department” means the department of administration created in 2-15-1001.
 - (11) (a) Except in 2-18-306, “employee” means any state employee other than an employee excepted under 2-18-103 or 2-18-104.
 - (b) The term does not include a student intern.
 - (12) “Job evaluation factor” means a measure of the complexities of the predominant duties of a position.
 - (13) “Job sharing” means the sharing by two or more persons of a position.
 - (14) “Market midpoint” means the median base salary that other employers pay to employees in comparable occupations as determined by the department’s salary survey of the relevant labor market.
 - (15) “Occupation” means a generalized family of positions having substantially similar duties and requiring similar qualifications, education, and experience.
 - (16) “Occupational wage range” means a range of pay, including a minimum, market midpoint, and maximum salary, for a specific occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation. The salary for an employee may be less than the minimum salary.
 - (17) “Pay band” means a wide salary range covering a number of different occupations. Pay bands are used for reporting and analysis purposes only.
 - (18) “Pay progression” means a process by which an employee’s compensation may be increased, based on documented factors determined by the department, to bring the employee’s compensation to a higher rate within the occupational wage range of the employee.
 - (19) “Permanent employee” means an employee who is designated by an agency as permanent, who was hired through a competitive selection process unless excepted from the competitive process by law, and who has attained or is eligible to attain permanent status.
 - (20) “Permanent status” means the state an employee attains after satisfactorily completing an appropriate probationary period.
 - (21) “Personal staff” means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.
 - (22) “Position” means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.
 - (23) “Program” means a combination of planned efforts to provide a service.
 - (24) “Seasonal employee” means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.
 - (25) “Short-term worker” means a person who:
 - (a) may be hired by an agency without using a competitive hiring process for an hourly wage established by the agency;
 - (b) may not work for the agency for more than 90 days in a continuous 12-month period;
 - (c) is not eligible for permanent status;
 - (d) may not be hired into a permanent position by the agency without a competitive selection process;
 - (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter; and
 - (f) may be discharged without cause.

- (26) "Student intern" means a person who:
- (a) has been accepted in or is currently enrolled in an accredited school, college, or university and may be hired by an agency in a student intern position without using a competitive selection process;
 - (b) is not eligible for permanent status;
 - (c) is not eligible to become a permanent employee without a competitive selection process;
 - (d) must be covered by the hiring agency's workers' compensation insurance;
 - (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter; and
 - (f) may be discharged without cause.
- (27)(a) "Telework" means a flexible work arrangement where a designated employee may work from:
- (i) home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace; or
 - (ii) an alternative worksite outside the state of Montana limited to:
 - (A) employees who are mental health professionals as defined in 27-1-1101 involved in psychological or psychiatric evaluations and treatment;
 - (B) employees engaged in providing services related to information technology as defined in 2-17-506; or
 - (C) employees who are medical professionals involved in medical evaluations and treatment.
 - (b) The office of budget and program planning must approve a designated employee's alternative worksite outside the state of Montana before the employee begins work.
- (28) "Temporary employee" means an employee who:
- (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
 - (b) performs duties on a temporary basis;
 - (c) is not eligible for permanent status;
 - (d) is terminated at the end of the employment period; and
 - (e) is not eligible to become a permanent employee without a competitive selection process.

History: Ap.p. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; Sec. 59-903, R.C.M. 1947; Ap.p. Sec. 1, Ch. 563, L. 1977; Sec. 59-915, R.C.M. 1947; R.C.M. 1947, 59-903(1), (2), (part(3)), (4), (5), 59-915; amd. Sec. 1, Ch. 512, L. 1979; amd. Sec. 1, Ch. 678, L. 1979; amd. Sec. 1, Ch. 421, L. 1981; amd. Sec. 1, Ch. 684, L. 1983; amd. Sec. 1, Ch. 720, L. 1991; amd. Sec. 2, Ch. 455, L. 1995; amd. Sec. 1, Ch. 339, L. 1997; amd. Sec. 1, Ch. 558, L. 1999; amd. Sec. 2, Ch. 56, L. 2005; amd. Sec. 1, Ch. 75, L. 2005; amd. Sec. 3, Ch. 81, L. 2007; amd. Sec. 1, Ch. 7, L. 2009; amd. Sec. 1, Ch. 175, L. 2017; amd. Sec. 1, Ch. 430, L. 2017; amd. Sec. 5, Ch. 456, L. 2019.

2-18-102. Personnel administration — general policy setting — oversight.

- (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:
- (a) exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

- (b) foster and develop programs for recruitment and selection of capable persons for employment and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;
 - (c) foster, develop, and promote job sharing in agencies;
 - (d) investigate from time to time the operation and effect of parts 1 through 3 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;
 - (e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;
 - (f) apply and carry out parts 1 through 3 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 through 3.
- (2) The department may delegate authority granted to it under parts 1 through 3 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 through 3, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.
- (3) The department shall develop and issue personnel policies for the state and shall adopt policies or rules to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.
- (4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency.
- (5) Except as otherwise provided by law, the office of budget and program planning shall:
- (a) approve any salary increase proposed by an agency that exceeds an employee's occupational wage range prior to the increase going into effect;
 - (b) monitor the way each agency compensates its employees within the parameters of the occupational wage range for each occupation; and
 - (c) provide a report in an electronic format to the legislative finance committee identifying any agency that provides a base salary for an employee that exceeds the occupational wage range for the employee's occupation and the reasons for the differences.
- (6) The provisions of subsection (5)(a) do not apply to employees of the following agencies:
- (a) the department of justice;
 - (b) the office of public instruction;
 - (c) the public service commission;
 - (d) the secretary of state; and
 - (e) the state auditor's office.
- (7) The agencies listed in subsection (6) shall provide required budget information on personal services, and pay increases above the occupational wage range for these agencies are not required to be included in the executive budget in accordance with Title 17, chapter 7, part 1.
- (8) The department of administration shall adopt rules and procedures for job classification.
- (9) An agency may not change the classification of an occupation or its related job evaluation factors until the agency submits the proposed changes to and receives approval from the department of administration.

History: En. Sec. 14, Ch. 440, L. 1973; R.C.M. 1947, 59-913; amd. Sec. 2, Ch. 568, L. 1979; amd. Sec. 2, Ch. 684, L. 1983; amd. Sec. 1, Ch. 84, L. 1995; amd. Sec. 11, Ch. 562, L. 1995; amd. Sec. 2, Ch. 339, L. 1997; amd. Sec. 2, Ch. 430, L. 2017.

2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and eight professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218; and
- (21) the director of the office of state public defender provided for in 2-15-1029.

History: En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979; amd. Sec. 1, Ch. 176, L. 1983; amd. Sec. 11, Ch. 161, L. 1987; amd. Sec. 17, Ch. 581, L. 1987; amd. Sec. 21, Ch. 316, L. 1989; amd. Sec. 39, Ch. 613, L. 1989; amd. Sec. 2, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 447, L. 1991; amd. Sec. 2, Ch. 507, L. 1991; amd. Sec. 2, Ch. 395, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 3, Ch. 455, L. 1995; amd. Sec. 11, Ch. 545, L. 1995; amd. Sec. 24, Ch. 546, L. 1995; amd. Sec. 3, Ch. 339, L. 1997; amd. Sec. 3, Ch. 417, L. 1997; amd. Sec. 2, Ch. 549, L. 1997; amd. Sec. 32, Ch. 313, L. 2001; amd. Sec. 18, Ch. 483, L. 2001; amd. Sec. 16, Ch. 449, L. 2005; amd. Sec. 1, Ch. 24, L. 2011; amd. Sec. 3, Ch. 358, L. 2017; amd. Sec. 1, Ch. 61, L. 2019; amd. Sec. 1, Ch. 450, L. 2019.

2-18-104. Exemption for personal staff — limit.

- (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from parts 1 through 3 and 10.
- (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless oth-

erwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

- (3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10.

History: En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; R.C.M. 1947, 59-903(part (3)); amd. Sec. 3, Ch. 512, L. 1979; amd. Sec. 1, Ch. 538, L. 1983; amd. Sec. 1, Ch. 661, L. 1987; amd. Sec. 3, Ch. 660, L. 1989; amd. Sec. 4, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 in (1), at end after "from", substituted "parts 1 through 3 and 10" for "the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013". Amendment effective July 1, 1997.

1989 Amendment: Deleted former (4) that read: "(4) A person occupying an exempt position under 2-18-103 or this section may not receive an increase in compensation unless the person changes positions or successfully completes a probationary period in fiscal year 1988 or 1989." Amendment effective July 1, 1989.

1987 Amendment: Inserted (4) freezing compensation for exempt positions.

1983 Amendment: In (3), increased number of exempted staffers from 5 to 10 and at end deleted "and must be approved by the department according to criteria approved by the department".

2-18-105. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. Sec. 16, Ch. 440, L. 1973; R.C.M. 1947, 59-914.

2-18-106. No limitation on legislative authority — transfer of funds.

- (1) Parts 1 through 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust determinations in accordance with legislative appropriations.
- (2) Unexpended agency appropriation balances in the first year of the biennium may be transferred to the second year of the biennium to offset the costs of pay increases.

History: (1)En. Sec. 13, Ch. 440, L. 1973; amd. Sec. 5, Ch. 181, L. 1975; R.C.M. 1947, 59-912; amd. Sec. 2, Ch. 678, L. 1979; (2)En. Sec. 10, Ch. 421, L. 1981; amd. Sec. 6, Ch. 710, L. 1983; amd. Sec. 120, Ch. 61, L. 2007.

2-18-107. Job-sharing positions — benefits.

- (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. Job sharing may be actively pursued to fill vacated or new positions but may not be actively pursued to replace current full-time employees. However, on request of a current employee, that employee's position may be considered for job sharing. A position may be filled by more than one incumbent currently in a full-time position.
- (2) Employees in a job-sharing status are entitled to holiday pay, annual leave, sick leave, and health benefits on the same basis as permanent part-time employees provided for in 2-18-603, 2-18-611, 2-18-618, and 2-18-703.
- (3) Employees classified in a part-time status may not be reclassified to a job-sharing status while employed in the position classified as part-time.

History: En. Sec. 3, Ch. 684, L. 1983; amd. Sec. 1, Ch. 106, L. 1985; amd. Sec. 121, Ch. 61, L. 2007.

Compiler's Comments

1985 Amendment: In (2) substituted language providing that job-sharing benefits are to be provided in the same manner as for permanent part-time employees for former text that read: "Employee holiday pay, annual leave, sick leave, and health benefits for a full-time equivalent position filled by job sharing must be divided on a pro rata basis between the persons filling such position."

Legislative Intent — Report: Section 4, Ch. 684, L. 1983, provided: "The legislature intends that the state permit job sharing in certain positions when it is done to maintain or increase efficiency in such positions and actively promote the hiring of new employees or the filling of vacant positions by using job sharing. The legislature does not intend that the state actively promote replacement of current full-time employees with job sharing employees. The legislative fiscal analyst shall report to the 49th legislature on the success of agencies in implementing this intent."

See "Job Sharing in Montana State Government", Report to Legislative Finance Committee by the Office of the Legislative Fiscal Analyst, Oct. 31, 1984.

Cross-References

Administration of leave rules, 2-18-604.

Annual leave, 2-18-611.

Sick leave — death benefit payout, 2-18-618.

Group insurance for public employees, 2-18-702.

2-18-108 and 2-18-109 reserved.

2-18-110. Repealed. Sec. 11, Ch. 7, L. 2009.

History: En. Sec. 11, Ch. 720, L. 1991.

2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation — rules.

- (1) A state agency that operates within an Indian reservation shall give a preference in hiring for employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.
- (2) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.
- (3) For the purposes of this section, the following definitions apply:
 - (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:
 - (i) a state elected official;
 - (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;
 - (iii) appointment by an elected official to a public office if the appointment is provided for by law;
 - (iv) engagement as an independent contractor or employment by an independent contractor; or
 - (v) engagement as a student intern.
 - (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.
 - (c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state.

History: En. Sec. 1, Ch. 506, L. 1991; amd. Sec. 5, Ch. 339, L. 1997; amd. Sec. 2, Ch. 75, L. 2005.

2-18-112 through 2-18-114 reserved.

2-18-115. Exemption for certain university temporary employees — “temporary employee” defined.

- (1) With the exception of 2-18-603, the requirements of parts 6 and 7 of this chapter do not apply to a temporary employee of the university system.
- (2) As used in this section, “temporary employee” means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

History: En. Sec. 1, Ch. 121, L. 1995.

Compiler’s Comments

Effective Date: Section 4, Ch. 121, L. 1995, provided that this section is effective March 10, 1995.

2-18-116 through 2-18-119 reserved.

2-18-120. Telework authorized and encouraged.

- (1) An agency may authorize telework for specified employees when it is in the state’s best interest as determined and documented by the agency.
- (2) The department shall adopt policies to encourage agencies to authorize telework and to provide for the uniform implementation of this section by agencies.

History: En. Sec. 1, Ch. 56, L. 2005.

Part 5 Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person’s designated headquarters and engaged in official state business in accordance with the following provisions:

- (1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$7.50 for the morning meal, \$8.50 for the midday meal, and \$14.50 for the evening meal except as provided in subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.
- (2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:
 - (a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

- (b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.
- (3) Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:
 - (a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and
 - (b) lodging when the actual cost exceeds the maximum established in subsection (2)(a) or (4)(a).
- (4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:
 - (a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:
 - (i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and
 - (ii) \$155 per night for lodging.
 - (b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.
- (5) When other than commercial, nonreceptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.
- (6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.
- (7) The provisions of this section may not be construed as affecting the validity of 5-2-301.
- (8) The department of administration shall establish policies necessary to effectively administer this section for state government.
- (9) All commercial air travel must be by the least expensive class service available.
- (10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.
- (11) For the purposes of implementing subsection (10), the following definitions apply:
 - (a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.
 - (b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981; amd. Sec. 1, Ch. 646, L. 1983; amd. Sec. 1, Ch. 399, L. 1987; amd. Sec. 5, Ch. 83, L. 1989; amd. Sec. 1, Ch. 207, L. 1989; amd. Sec. 1, Ch. 561, L. 1991; amd.

Sec. 1, Ch. 439, L. 1997; amd. Sec. 1, Ch. 91, L. 2009; amd. Sec. 1, Ch. 251, L. 2011; amd. Sec. 2, Ch. 85, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 85 in (1) in first sentence after "actual cost of lodging" deleted "not exceeding \$35 per day", increased the morning meal reimbursement from \$5 to \$7.50, increased the midday meal reimbursement from \$6 to \$8.50, and increased the evening meal reimbursement from \$12 to \$14.50; in (3)(b) substituted "subsection (2)(a) or (4)(a)" for "subsection (1), (2)(a), or (4)(a)"; and made minor changes in style. Amendment effective July 1, 2019.

2-18-502. Computation of meal allowance.

- (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:
 - (a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;
 - (b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and
 - (c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.
- (2) An eligible employee may receive:
 - (a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or
 - (b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.
- (3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.
- (4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.
- (5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539; amd. Sec. 1, Ch. 123, L. 1983; amd. Sec. 2, Ch. 439, L. 1997.

2-18-503. Mileage — allowance.

- (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.
- (2) (a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.
- (b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-

owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

- (3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.
- (4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.
- (5) This section does not alter 5-2-301.
- (6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979; amd. Sec. 3, Ch. 439, L. 1997; amd. Sec. 8, Ch. 558, L. 1999; amd. Sec. 1, Ch. 4, Sp. L. August 2002; amd. Sec. 1, Ch. 112, L. 2005; amd. Sec. 1, Ch. 40, L. 2007.

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. A state officer or employee of the state may not receive payment from any public funds for traveling expenses or other expenses for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gatherings that the officer or employee may by virtue of the office or employment find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 122, Ch. 61, L. 2007.

Part 6 Leave Time

2-18-601. (Temporary) Definitions. For the purpose of this part, the following definitions apply:

- (1) (a) "Accident" means an unexpected traumatic incident or unusual strain that is identifiable by time and place of occurrence and caused by a specific event on a single day or during a single work shift.
(b) The term does not include an employee's suicide.
- (2) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.
(b) The term does not mean the state compensation insurance fund.
- (3) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.
- (4) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.
- (5) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.
- (6) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.
- (7) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community college, persons contracted as independent contractors or hired under personal services contracts, and student interns.
- (8) "Full-time employee" means an employee who normally works 40 hours a week.
- (9) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.
- (10) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.
- (11) "Part-time employee" means an employee who normally works less than 40 hours a week.
- (12) "Permanent employee" means a permanent employee as defined in 2-18-101.
- (13) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.
- (14) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

- (15) “Short-term worker” means:
- (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or
 - (b) for the legislative branch, an individual who:
 - (i) may be hired by a legislative agency without using a competitive process for an hourly wage established by the agency;
 - (ii) may not work for the agency for more than 6 months in a continuous 12-month period;
 - (iii) is not eligible for permanent status;
 - (iv) may not be hired into a permanent position by the agency without a competitive selection process;
 - (v) is not eligible to earn the leave and holiday benefits provided in this part; and
 - (vi) may be discharged without cause.
- (16) “Sick leave” means a leave of absence with pay for:
- (a) a sickness suffered by an employee or a member of the employee’s immediate family; or
 - (b) the time that an employee is unable to perform job duties because of:
 - (i) a physical or mental illness, injury, or disability;
 - (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee’s child;
 - (iii) parental leave for a permanent employee as provided in 2-18-606;
 - (iv) quarantine resulting from exposure to a contagious disease;
 - (v) examination or treatment by a licensed health care provider;
 - (vi) short-term attendance, in an agency’s discretion, to care for a relative or household member not covered by subsection (16)(a) until other care can reasonably be obtained;
 - (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or
 - (viii) death or funeral attendance of an immediate family member or, at an agency’s discretion, another person.
- (17) “Student intern” means a student intern as defined in 2-18-101.
- (18) “Temporary employee” means a temporary employee as defined in 2-18-101.
- (19) “Transfer” means a change of employment from one agency to another agency in the same jurisdiction without a break in service.
- (20) “Vacation leave” means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer. (Terminates June 30, 2023—sec. 10, Ch. 167, L. 2019.)

2-18-601. (Effective July 1, 2023) Definitions. For the purpose of this part, the following definitions apply:

- (1) (a) “Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.
- (b) The term does not mean the state compensation insurance fund.
- (2) “Break in service” means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.
- (3) “Common association” means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.
- (4) “Continuous employment” means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

- (5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.
- (6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community college, persons contracted as independent contractors or hired under personal services contracts, and student interns.
- (7) "Full-time employee" means an employee who normally works 40 hours a week.
- (8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.
- (9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.
- (10) "Part-time employee" means an employee who normally works less than 40 hours a week.
- (11) "Permanent employee" means a permanent employee as defined in 2-18-101.
- (12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.
- (13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.
- (14) "Short-term worker" means:
 - (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or
 - (b) for the legislative branch, an individual who:
 - (i) may be hired by a legislative agency without using a competitive process for an hourly wage established by the agency;
 - (ii) may not work for the agency for more than 6 months in a continuous 12-month period;
 - (iii) is not eligible for permanent status;
 - (iv) may not be hired into a permanent position by the agency without a competitive selection process;
 - (v) is not eligible to earn the leave and holiday benefits provided in this part; and
 - (vi) may be discharged without cause.
- (15) "Sick leave" means a leave of absence with pay for:
 - (a) a sickness suffered by an employee or a member of the employee's immediate family; or
 - (b) the time that an employee is unable to perform job duties because of:
 - (i) a physical or mental illness, injury, or disability;
 - (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;
 - (iii) parental leave for a permanent employee as provided in 2-18-606;
 - (iv) quarantine resulting from exposure to a contagious disease;
 - (v) examination or treatment by a licensed health care provider;
 - (vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;
 - (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or
 - (viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.
- (16) "Student intern" means a student intern as defined in 2-18-101.
- (17) "Temporary employee" means a temporary employee as defined in 2-18-101.
- (18) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

- (19) “Vacation leave” means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

History: En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979; amd. Sec. 1, Ch. 178, L. 1981; amd. Sec. 1, Ch. 260, L. 1991; amd. Sec. 2, Ch. 756, L. 1991; amd. Sec. 7, Ch. 339, L. 1997; amd. Sec. 2, Ch. 314, L. 2001; amd. Sec. 1, Ch. 11, L. 2005; amd. Sec. 3, Ch. 75, L. 2005; amd. Sec. 1, Ch. 582, L. 2005; amd. Sec. 1, Ch. 503, L. 2007; amd. Sec. 2, Ch. 185, L. 2009; amd. Sec. 2, Ch. 175, L. 2017; amd. Sec. 1, Ch. 370, L. 2017; amd. Sec. 2, Ch. 167, L. 2019.

Compiler’s Comments

2019 Amendment: Chapter 167 inserted definition of accident; and made minor changes in style. Amendment effective April 18, 2019, and terminates June 30, 2023.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1) (part).

2-18-603. Holidays — observance when falling on employee’s day off.

- (1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee’s supervisor, whichever allows a day off in addition to the employee’s regularly scheduled days off, provided the employee is in a pay status on the employee’s last regularly scheduled working day immediately before the holiday or on the employee’s first regularly scheduled working day immediately after the holiday.
- (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.
- (c) A short-term worker may not receive holiday pay.
- (2) For purposes of this section, the term “employee” does not include nonteaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979; amd. Sec. 1, Ch. 312, L. 1981; amd. Sec. 8, Ch. 339, L. 1997.

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and may, when necessary, promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse of these provisions. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision of the state.

History: En. Sec. 10, Ch. 568, L. 1979; amd. Sec. 2, Ch. 582, L. 2005.

2-18-605. Repealed. Sec. 13, Ch. 339, L. 1997.

History: En. Sec. 2, Ch. 178, L. 1981.

2-18-606. Parental leave for state employees.

- (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:
 - (a) the employee is adopting a child; or
 - (b) the employee is a birth father.
- (2) As used in this section, “placement” means placement for adoption as defined in 33-22-130.
- (3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

History: En. Sec. 1, Ch. 756, L. 1991; amd. Sec. 1, Ch. 2, L. 1997; amd. Sec. 158, Ch. 480, L. 1997.

2-18-607 through 2-18-610 reserved.**2-18-611. Annual vacation leave.**

- (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.
- (2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.
- (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.
- (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.
- (5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.
- (6) A short-term worker or a student intern, as both terms are defined in 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker or as a student intern does not apply toward the person's rate of earning vacation leave credits.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979; amd. Sec. 1, Ch. 280, L. 1983; amd. Sec. 2, Ch. 593, L. 1985; amd. Sec. 1, Ch. 328, L. 1987; amd. Sec. 9, Ch. 339, L. 1997; amd. Sec. 2, Ch. 11, L. 2005; amd. Sec. 4, Ch. 75, L. 2005.

2-18-612. Rate earned.

- (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years or more	24

- (2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:
- (i) 2,080 hours of service following the date of employment. An employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period.
 - (ii) 12 calendar months in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any 1 month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.
- (b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979; amd. Sec. 3, Ch. 593, L. 1985; amd. Sec. 123, Ch. 61, L. 2007. 277, 511 P2d 339 (1973).

Attorney General's Opinions

Change to Ten-Hour Work Day — Leave Time Calculated on Hourly Basis: Accrued employee leave time is calculated on an hourly basis for the purpose of determining the amount of leave time credited to employees who change from an 8-hour work day to a 10-hour work day. 39 A.G. Op. 15 (1981).

Holidays and Vacations: Section 2-18-603, which generally entitles each state, city, and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off, is applicable to full-time salaried employees of a county hospital district. Vacation and holiday leave time for public employees are cumulative. If a holiday or its complement under 2-18-603 falls during a public employee's annual vacation, that day should not be counted against leave time. If counted against leave time, the employee must be given a paid day off at a later time to make up for the lost holiday. A public employee may be required to work on a holiday or its complement under 2-18-603. However, a public employee who works a holiday or its complement must be either compensated for the lost holiday or given an opportunity to take a paid day off at a later time. The holiday provisions of 2-18-603 apply to full-time, salaried public employees. They do not apply to part-time, temporary, or seasonal employees who are paid on an hourly or per diem basis for work actually performed. 38 A.G. Op. 16 (1979).

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969; R.C.M. 1947, 59-1004.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

- (1) having been ordered on active duty with the armed forces of the United States;
- (2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
- (3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves are granted must be determined by agreement between each employee and the employing agency with regard to the best interest of the state or any county or city of the state as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006; amd. Sec. 124, Ch. 61, L. 2007.

2-18-617. Accumulation of leave — cash for unused — transfer — death benefit.

- (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.
- (b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).
- (2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

- (i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii); or
- (ii) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:
 - (A) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and
 - (B) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for in 2-18-611.
- (b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is non-refundable and is not eligible for cash compensation upon termination.
- (c) If an employee has earned vacation leave but dies from an accident while on the job, the accumulated vacation leave available for cash compensation under subsection (2)(a)(i) must be paid out as a death benefit to the employee's beneficiary or estate. This benefit is in addition to workers' compensation benefits, if those are applicable.
- (3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.
- (4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.
- (5) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy. (Subsection (2)(c) terminates June 30, 2023—sec. 10, Ch. 167, L. 2019.)

History: (1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979; amd. Sec. 1, Ch. 115, L. 1993; amd. Sec. 1, Ch. 143, L. 1997; amd. Sec. 1, Ch. 47, L. 2007; amd. Sec. 2, Ch. 503, L. 2007; amd. Sec. 3, Ch. 167, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 167 inserted (2)(c) requiring that accumulated vacation leave be paid out as a death benefit if an employee dies from an accident while on the job. Amendment effective April 18, 2019, and terminates June 30, 2023.

Attorney General's Opinions

Annual Cash-Out of Vacation Benefits Impermissible: If excess annual leave is accumulated, it must be used according to the conditions established in this section or it is forfeited. The statutory language clearly establishes a legislative intent that public employees do not have the option of cashing out accumulated but unused vacation leave. The state's general policy encouraging collective bargaining between public employees and their employers is not sufficient to overcome the clear legislative intent. Therefore, Montana law does not permit a public employer to offer a cash-out benefit to employees whereby the unused accumulated vacation leave credits of a public employee who is not terminating employment are bought back by the employer. 46 A.G. Op. 25 (1996).

2-18-618. (Temporary) Sick leave — death benefit payout.

- (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.
- (2) An employee may not accrue sick leave credits while in a leave-without-pay status.
- (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.
- (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.
- (5) A short-term worker may not earn sick leave credits.
- (6)
 - (a) Except as otherwise provided in 2-18-1311 or subsection (6)(c) of this section, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971.
 - (b) When an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.
 - (c) For an employee who dies from an accident while on the job, any sick leave benefits must be paid out as a death benefit at 100% of the accumulated value of the sick leave to the employee's beneficiary or estate.
- (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.
- (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.
- (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.
- (10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave. (Terminates June 30, 2023—sec. 10, Ch. 167, L. 2019.)

2-18-618. (Effective July 1, 2023) Sick leave.

- (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.
- (2) An employee may not accrue sick leave credits while in a leave-without-pay status.
- (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.
- (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.
- (5) A short-term worker may not earn sick leave credits.
- (6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.
- (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.
- (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.
- (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.
- (10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979; amd. Sec. 2, Ch. 280, L. 1983; amd. Sec. 1, Ch. 707, L. 1985; amd. Sec. 2, Ch. 328, L. 1987; amd. Sec. 1, Ch. 414, L. 1989; amd. Sec. 1, Ch. 25, L. 1991; amd. Sec. 2, Ch. 758, L. 1991; amd. Sec. 10, Ch. 339, L. 1997; amd. Sec. 11, Ch. 272, L. 2001; amd. Sec. 2, Ch. 47, L. 2007; amd. Sec. 4, Ch. 167, L. 2019.

2-18-619. Jury duty — service as witness.

- (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees must be applied against the amount due the employee from the employer. However, if an employee elects to use annual leave to serve on a jury, the employee may not be required to remit the juror fees to the employer. An employee is not required to remit to the employer any expense or mileage allowance paid by the court.
- (2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees must be applied against the amount due the employee from the employer. However, if an employee elects to use annual leave to serve as a witness, the employee may not be required to remit the witness fees to the employer. An employee is not required to remit to the employer any expense or mileage allowances paid by the court.
- (3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979; amd. Sec. 125, Ch. 61, L. 2007.

2-18-620. Repealed. Sec. 3, Ch. 185, L. 2009.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 692, L. 1991.

2-18-621. Unlawful termination — unlawful payments.

- (1) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.
- (2) (a) An employee who terminates employment is entitled to receive only:
 - (i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer [or, in the case of an employee's death, as described in 2-18-623]; and
 - (ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.
- (b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).
- (3) Subsection (2) does not apply to:
 - (a) retirement benefits;
 - (b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or
 - (c) any other payment authorized by law. (Bracketed language terminates June 30, 2023—sec. 10, Ch. 167, L. 2019.)

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5); amd. Sec. 22, Ch. 684, L. 1985; amd. Sec. 126, Ch. 61, L. 2007; amd. Sec. 1, Ch. 341, L. 2007; amd. Sec. 5, Ch. 167, L. 2019.

2-18-622. Reduction in force — severance pay and retraining allowance required. If a reduction in force is necessary, the state may provide severance pay and a retraining allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

History: En. Sec. 1, Ch. 758, L. 1991; amd. Sec. 8, Ch. 640, L. 1993; (3)En. Sec. 13, Ch. 640, L. 1993.

2-18-623. (Temporary) Compensatory time death benefit. Compensatory time accumulated by an employee of a state agency as defined in 2-2-102 who dies in an accident while on the job and before being able to use the compensatory time must be converted at 100% of its value to a death benefit to be paid to the employee's beneficiary or estate. (Terminates June 30, 2023—sec. 10, Ch. 167, L. 2019.)

History: En. Sec. 6, Ch. 167, L. 2019.

2-18-624 and 2-18-625 reserved.

2-18-626. Department of justice employees — payment of compensation for time spent answering subpoena. A department of justice employee must receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when called to testify in connection with the employee's official duties. The department of justice may bill the person or organization requesting issuance of the subpoena for reimbursement for the employee's time.

History: En. Sec. 1, Ch. 363, L. 1987.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

2-18-627. Paid leave for disaster relief volunteer service.

- (1) An agency may grant to a state employee up to 15 days in a calendar year of a paid leave of absence for the employee to participate in specialized disaster relief services for the American red cross if:
 - (a) the employee is a certified American red cross disaster relief volunteer; and
 - (b) the American red cross has requested the employee's services.
- (2) Leave time granted pursuant to this section:
 - (a) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;
 - (b) commences upon approval of the employee's employing agency; and
 - (c) may not be charged against any other leave to which the employee is entitled.
- (3) For purposes of this section, the following definitions apply:
 - (a) "Agency" has the meaning provided in 2-18-101.
 - (b) "Employee" means any person employed by an agency, except an elected official.

History: En. Sec. 1, Ch. 225, L. 1999.

2-18-628 through 2-18-640 reserved.

2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts.

- (1) An employee of a county hospital or county rest home in a county having a taxable valuation of less than \$30 million or an employee of a hospital district is exempt from the provisions of this part.
- (2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.

History: En. Sec. 1, Ch. 559, L. 2001; amd. Sec. 1, Ch. 128, L. 2011.

Part 7 Group Insurance Generally

Part Compiler's Comments

Funding: Section 2, Ch. 359, L. 1975, read: "In compliance with section 43-517[, R.C.M. 1947 (since amended, now 1-2-112)], the administration of this act is declared a public purpose of a county, city, or town which may be in addition to any other levy and may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the county, city, or town."

2-18-701. Definitions. As used in this part, the following definitions apply:

- (1) "Dependent" has the meaning provided in 33-22-140.
- (2) "Employee", as the term applies to a person employed in the executive, judicial, or legislative branches of state government, means:
 - (a) a permanent full-time employee, as provided in 2-18-601;
 - (b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;
 - (c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;
 - (d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;
 - (e) elected officials;
 - (f) officers and permanent employees of the legislative branch;
 - (g) judges and permanent employees of the judicial branch;
 - (h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;
 - (i) a temporary full-time employee, as provided in 2-18-601:
 - (i) who is regularly scheduled to work more than 6 months a year;
 - (ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
 - (iii) whose temporary status is defined through collective bargaining;
 - (j) a temporary part-time employee, as provided in 2-18-601;

- (i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
- (ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
- (iii) whose temporary status is defined through collective bargaining;
- (k) a full-time short-term worker, as provided in 2-18-101 and 2-18-601, who is in a position that does not recur each year;
- (l) a part-time short-term worker, as provided in 2-18-101 and 2-18-601, who is regularly scheduled to work 20 hours or more a week in a position that does not recur each year; and
- (m) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, “part-time or full-time employee of the state compensation insurance fund” means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(5); amd. Sec. 12, Ch. 678, L. 1979; amd. Sec. 6, Ch. 421, L. 1981; amd. Sec. 1, Ch. 171, L. 1989; amd. Sec. 3, Ch. 314, L. 2001; amd. Sec. 5, Ch. 75, L. 2005; amd. Sec. 2, Ch. 356, L. 2007; amd. Sec. 3, Ch. 175, L. 2017.

Compiler’s Comments

2017 Amendment: Chapter 175 in definition of employee inserted (k) regarding full-time short-term workers, inserted (l) regarding part-time short-term workers, and at end of definition deleted former (b) that read: “(b) The term does not include a student intern, as defined in 2-18-101”; and made minor changes in style. Amendment effective July 1, 2017.

Part 2 Boards

7-1-201. Boards.

- (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:
 - (a) the number of administrative board, district board, or commission members;
 - (b) the terms of the members;
 - (c) whether members are entitled to mileage, per diem, expenses, and salary; and
 - (d) any special qualifications for membership in addition to those established by law.
- (2) (a) An administrative board, a district board, or a commission may be assigned responsibility for a department or service district.
 - (b) An administrative board, a district board, or a commission may:
 - (i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law; and
 - (ii) administer programs, establish policy, and adopt administrative and procedural rules.
 - (c) The resolution creating an administrative board, a district board, or a commission must grant the administrative board, district board, or commission all powers neces-

sary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

- (d) If authorized by resolution, an administrative board, a district board, or a commission may employ personnel to assist in its functions.
- (3) (a) An administrative board, a district board, or a commission may be made elective.
- (b) If an administrative board, a district board, or a commission is made elective, the election must be conducted as provided in Title 13, chapter 1, part 5.
- (c) A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been elected and qualified.
- (4) An administrative board, a district board, or a commission may not sue or be sued independently of the local government unless authorized by state law.
- (5) (a) If administrative board, district board, or commission members are to be appointed, the members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy. A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified.
- (b) The county commissioners shall maintain a register of appointments, including:
 - (i) the name of the administrative board, district board, or commission;
 - (ii) the date of appointment and confirmation, if any is required;
 - (iii) the length of term;
 - (iv) the name and term of the presiding officer and other officers of each administrative board, district board, or commission; and
 - (v) the date, time, and place of regularly scheduled meetings.
- (c) Terms for members of elected or appointed boards or commissions may not exceed 4 years. Unless otherwise provided by resolution or as provided in 7-11-1010, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.
- (6) An administrative board, a district board, or a commission must consist of a minimum of 3 members and must have an odd number of members.
- (7) The resolution creating an administrative board, a district board, or a commission may provide for voting or nonvoting ex officio members.
- (8) Two or more local governments may provide for a joint administrative board, district board, or commission to be established by interlocal agreement.
- (9) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.
- (10) An administrative board, a district board, or a commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.
- (11) An administrative board, a district board, or a commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.
- (12) Unless otherwise provided by law, a person must be a citizen of the United States and a resident of the county to be eligible for appointment to an administrative board, a district board, or a commission. The county commissioners may prescribe by resolution additional qualifications for membership.
- (13) A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as provided by resolution.

- (14) A resolution creating an administrative board, a district board, or a commission must contain, if applicable, budgeting and accounting requirements for which the administrative board, district board, or commission is accountable to the county commissioners.
- (15) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board.

History: En. Sec. 1, Ch. 543, L. 1995; amd. Sec. 1, Ch. 254, L. 1999; amd. Sec. 22, Ch. 286, L. 2009; amd. Sec. 16, Ch. 49, L. 2015; amd. Sec. 2, Ch. 307, L. 2017; amd. Sec. 1, Ch. 372, L. 2017.

7-1-202. Creation of new boards. Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

- (1) county building commission;
- (2) cemetery districts;
- (3) county fair commission;
- (4) mosquito control board;
- (5) museum board;
- (6) board of park commissioners;
- (7) road district;
- (8) rodent control board;
- (9) solid waste district;
- (10) television district;
- (11) weed management district.

History: En. Sec. 2, Ch. 543, L. 1995; amd. Sec. 10, Ch. 114, L. 2003; amd. Sec. 23, Ch. 286, L. 2009.

7-1-203. County commissioners to assume duties of administrative boards, districts, and commissions.

- (1) If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission.
- (2) County commissioners, acting in the capacity of an administrative board, district, or commission may not receive any compensation in addition to their compensation as county commissioners.

History: En. Sec. 3, Ch. 543, L. 1995.

7-1-204. Board minutes. An administrative board, district, or commission created under 7-1-201 through 7-1-203 shall submit the minutes of its proceedings within 30 days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 12. The administrative board, district, or commission shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the administrative board, district, or commission.

History: En. Sec. 3, Ch. 262, L. 2015.

7-1-205. Service on more than one special purpose district board authorized in small communities — definitions.

- (1) In a small community a person may serve on more than one special purpose district board, regardless of whether the person is appointed or elected as provided by law.
- (2) (a) A person seeking election to more than one special purpose district board may run for more than one position only if the person runs unopposed for all potential positions.
- (b) If a position was unopposed at the time the person filed for the position and later becomes opposed during the course of an election campaign, the person running for more than one special purpose district board shall choose to run for one preferred special purpose district board and withdraw candidacy from all other special purpose district board positions.
- (3) For the purposes of this section, the following definitions apply:
 - (a) “Small community” means an area that fully encompasses more than one special purpose district and includes fewer than 500 electors, as defined in 13-1-101.
 - (b) “Special purpose district” has the meaning provided in 13-1-101.
 - (c) “Unopposed” means the number of candidates at the time of the election for each special purpose district board position is equal to or less than the number of positions available on each respective board.

History: En. Sec. 1, Ch. 141, L. 2019.

Part 21 Counties

7-1-2101. Nature of county.

- (1) A county is the largest political division of the state having corporate power.
- (2) Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed.

History: (1)En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R.C.M. 1921; Cal. Pol. C. Sec. 3901; re-en. Sec. 4293, R.C.M. 1935; Sec. 16-101, R.C.M. 1947; (2)En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R.C.M. 1921; Cal. Pol. C. Sec. 4000; re-en. Sec. 4441, R.C.M. 1935; Sec. 16-801, R.C.M. 1947; R.C.M. 1947, 16-101, 16-801.

Cross-References

General powers of local governments, Art. XI, sec. 4, Mont. Const.

Powers of counties — liberal construction, Art. XI, sec. 6, Mont. Const.

Powers of self-governing local governments, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

Case Notes

DECISIONS UNDER 1972 CONSTITUTION

Powers of Self-Government Charter Counties: Under the 1889 Montana Constitution, legislative control over counties was supreme; counties could exercise only such powers as were expressly granted to them by the state, together with such implied powers as were necessary for the execution of the powers expressly granted. The 1972 Montana Constitution opened to local government units new vistas

of shared sovereignty with the state through the adoption of self-government charters. Article XI, sec. 4, Mont. Const., continues to provide that general local government forms have such powers as are expressly provided or implied by law (to be liberally construed), but Art. XI, sec. 6, Mont. Const., provides that a local government unit may act under a self-government charter with its powers uninhibited except by express prohibitions of the constitution, law, or charter. The broad expanse of shared sovereignty given to self-governing local units is illustrated by 7-1-103 and 7-1-106. Madison County, having a self-governing charter form of local government, may exercise legislative powers it shares with the state. State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100, 38 St. Rep. 71 (1981).

7-1-2102. Name of county. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. This provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R.C.M. 1921; Cal. Pol. C. Sec. 4002; re-en. Sec. 4443, R.C.M. 1935; R.C.M. 1947, 16-803.

7-1-2103. County powers. A county has power to:

- (1) sue and be sued;
- (2) purchase and hold lands within its limits;
- (3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (4) make orders for the disposition or use of its property that the interests of its inhabitants require;
- (5) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R.C.M. 1921; Cal. Pol. C. Sec. 4003; re-en. Sec. 4444, R.C.M. 1935; R.C.M. 1947, 16-804; amd. Sec. 5, Ch. 584, L. 1999; amd. Sec. 1, Ch. 453, L. 2005.

7-1-2104. Exercise of county power. A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R.C.M. 1921; Cal. Pol. C. Sec. 4001; re-en. Sec. 4442, R.C.M. 1935; R.C.M. 1947, 16-802.

7-1-2105. Finding — contract authority.

- (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.
- (2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.
- (3) Section 7-1-2101 states that a county has the powers specified in this title or in special statutes and has powers that are necessarily implied from those expressed powers.

- (4) Section 7-1-2103 states that a county has the power to make contracts that may be necessary to the exercise of its powers.
- (5) Section 7-1-2104 states that a county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.
- (6) Therefore, the legislature finds that it is within a county's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the county be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

History: En. Sec. 1, Ch. 198, L. 2005.

7-1-2106 through 7-1-2110 reserved.

7-1-2111. Repealed. Sec. 33, Ch. 128, L. 2011.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part); amd. Sec. 38, Ch. 614, L. 1981; amd. Sec. 18, Ch. 695, L. 1985; amd. Sec. 1, Ch. 611, L. 1987; amd. Sec. 1, Ch. 655, L. 1987; amd. Sec. 1, Ch. 612, L. 1989; amd. Sec. 66, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 161, L. 1991; amd. Sec. 10, Ch. 9, Sp. L. November 1993; amd. Sec. 21, Ch. 451, L. 1995; amd. Sec. 1, Ch. 121, L. 1997; amd. Sec. 1, Ch. 466, L. 1997; amd. Sec. 1, Ch. 496, L. 1997; amd. Sec. 21, Ch. 426, L. 1999; amd. Sec. 4, Ch. 515, L. 1999; amd. Sec. 16, Ch. 556, L. 1999; amd. Sec. 4, Ch. 7, L. 2001; amd. Sec. 3, Ch. 522, L. 2003; amd. Sec. 8, Ch. 130, L. 2005; amd. Sec. 2, Ch. 44, L. 2007; amd. Sec. 1, Ch. 57, L. 2009.

7-1-2112. Repealed. Sec. 33, Ch. 128, L. 2011.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R.C.M. 1921; re-en. Sec. 4742, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974; R.C.M. 1947, 16-2420.

7-1-2113 through 7-1-2120 reserved.

7-1-2121. Publication and content of notice — proof of publication.

- (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.
- (2) Publication must be in a newspaper meeting the qualifications of subsections (3) and (4), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.
- (3) (a) The newspaper must:
 - (i) be of general circulation;
 - (ii) be published at least once a week;
 - (iii) be published in the county where the hearing or other action will take place; and
 - (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

- (A) circulation for the prior 12 months;
- (B) a statement of net distribution;
- (C) itemization of the circulation that is paid and that is free; and
- (D) the method of distribution.
- (b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.
- (4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.
- (5) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
- (6) The notice must be published twice, with at least 6 days separating each publication.
- (7) The published notice must contain:
 - (a) the date, time, and place of the hearing or other action;
 - (b) a brief statement of the action to be taken;
 - (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
 - (d) any other information required by the specific section requiring notice by publication.
- (8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
- (9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.
- (10) If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required.

History: En. Sec. 1, Ch. 349, L. 1985; amd. Sec. 1, Ch. 354, L. 2001; amd. Sec. 1, Ch. 444, L. 2005; amd. Sec. 1, Ch. 439, L. 2007; amd. Sec. 1, Ch. 279, L. 2013; amd. Sec. 17, Ch. 49, L. 2015.

7-1-2122. Mail notice.

- (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:
 - (a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;
 - (b) sending the notice by certified mail rather than first class; or
 - (c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.
- (2) The notice shall contain:
 - (a) the date, time, and place of the hearing or other action;
 - (b) a brief statement of the action to be taken;
 - (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
 - (d) any other information required by the specific section requiring mail notice.
- (3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

History: En. Sec. 2, Ch. 349, L. 1985.

7-1-2123. Posting.

- (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.
- (2) When posting is required, a copy of the document must be placed on the posting board, and a copy must be available at the office of the county clerk and recorder.

History: En. Sec. 4, Ch. 262, L. 2015.

Compiler's Comments

Effective Date: Sec. 25, Ch. 262, L. 2015, provided that this section is effective July 1, 2015.

Part 22

County Officers in General

7-4-2201. General qualifications for county office. A person is not eligible for a county office who at the time of election is not:

- (1) of the voting age required by the Montana constitution;
- (2) a citizen of the state; and
- (3) (a) an elector of the county in which the duties of the office are to be exercised; or
(b) in the case of an office consolidated between two or more counties, an elector in one of the counties in which the duties of the office are to be exercised.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401; amd. Sec. 1, Ch. 60, L. 1999.

7-4-2202. General qualifications for district or township offices. A person is not eligible to a district or township office unless the person is:

- (1) of voting age as required by the Montana constitution;
- (2) a citizen of the state; and
- (3) an elector of the district or township in which the duties of the office are to be exercised or for which the person is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402; amd. Sec. 406, Ch. 61, L. 2007

7-4-2203. County officers.

- (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:
 - (a) one county attorney;
 - (b) one clerk of the district court;
 - (c) one county clerk;
 - (d) one sheriff;
 - (e) one treasurer;
 - (f) one auditor if authorized by 7-6-2401;

- (g) one county superintendent of schools;
 - (h) one county surveyor;
 - (i) one assessor;
 - (j) one coroner;
 - (k) one public administrator; and
 - (l) at least one justice of the peace.
- (2) The commissioners may appoint at their discretion constables. More than one constable may be appointed for each justice's court.
 - (3) All elective township officers may be elected at each general election as now provided by law.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979; amd. Sec. 1, Ch. 228, L. 1989.

Cross-References

Constitutional listing of possible county officers, Art. XI, sec. 3(2), Mont. Const.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.

7-4-2205. Term of office — oath.

- (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.
- (2) A person appointed to any of the different offices serves at the pleasure of the commissioners.
- (3) Each officer who is mentioned in this part and who is elected to office shall:
 - (a) take the oath of office on or before the last business day of December following the officer's election; and
 - (b) take office at 12:01 a.m. on January 1 following the officer's election.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 71, L. 1983; amd. Sec. 2, Ch. 421, L. 1997; amd. Sec. 2, Ch. 131, L. 2007.

7-4-2206. Vacancies — appointment of interim officer.

- (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.
- (2) (a) Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) and (4), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

- (b) The commissioners may appoint a person to serve as an interim officer for the time period between occurrence of the vacancy and the date on which the vacancy is filled pursuant to this section. A person appointed as an interim officer must have the qualifications required under this chapter for the office to which the person has been appointed. Upon appointment, the interim officer is authorized to perform the duties assigned by law to that office.
- (3) Whenever a vacancy occurs prior to August 1 before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:
 - (a) Whenever the vacancy occurs prior to March 1 before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.
 - (b) Whenever the vacancy occurs on or after March 1 before the primary election, any political party desiring to enter a candidate in a partisan election in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the county election administrator of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the county election administrator prior to August 1 before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.
- (4) Whenever a vacancy occurs after July 31 before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979; amd. Sec. 15, Ch. 250, L. 1985; amd. Sec. 33, Ch. 42, L. 1997; amd. Sec. 1, Ch. 226, L. 1997; amd. Sec. 1, Ch. 51, L. 2013; amd. Sec. 4, Ch. 143, L. 2013; amd. Sec. 2, Ch. 372, L. 2017.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices prior to the time of the expiration of their respective terms. If any officer, at the close of the term, leaves to the officer's successor official labor to be performed for which the officer has received compensation or that it was the officer's duty to perform, the officer is liable to pay to the successor the full value of the services, which may be recovered in any court of competent jurisdiction upon action brought against the officer on the officer's official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221; amd. Sec. 407, Ch. 61, L. 2007.

7-4-2208. Absence of county officers from state.

- (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more than 30 consecutive days without the consent of the board of county commissioners, the officer forfeits the office.
- (2) If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417; amd. Sec. 1, Ch. 232, L. 1991; amd. Sec. 21, Ch. 381, L. 2005; amd. Sec. 1, Ch. 123, L. 2009.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers.

- (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as a lawyer.
- (2) A county clerk, clerk of any court, or sheriff may not act as an agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during the person's continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part); amd. Sec. 408, Ch. 61, L. 2007.

7-4-2211. County offices.

- (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.
- (2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.
- (b) This subsection (2) does not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part); amd. Sec. 3, Ch. 216, L. 1995.

7-4-2212. Official bonds of county officers.

- (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.
- (2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by Code Commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds.

- (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties on the bonds and their sufficiency.
- (2) If it appears to the satisfaction of the board or a majority of the members of the board that any surety upon any bond has, since the approval and acceptance of the bond, died or withdrawn, left the state, disposed of all of the surety's property in this state, or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of the liability on the bond, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection with and the reasons for the action.
- (3) The judge shall take notice of and investigate the matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make the bond good and sufficient according to the requirements of law and ample security for the amount of the bond.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979; amd. Sec. 409, Ch. 61, L. 2007.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in the officer's office, the officer may do so by photographic, micrographic, electronic, or other mechanical process that produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by national standards.

History: (1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part); amd. Sec. 7, Ch. 420, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 420 near middle substituted “photographic, micrographic, electronic” for “photostatic, microphotographic, microfilm”; deleted (2) regarding the manner of recording or photographing and storing of loose pages (see 1993 Session Law for text); and made minor changes in style. Amendment effective April 20, 1993.

7-4-2222. Substitution of reproduction for original document.

- (1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 may be disposed of or destroyed pursuant to the requirements of 2-6-1012 and Title 2, chapter 6, part 12, and the reproductions may be substituted as public records.
- (2) A reproduction of any record destroyed or disposed of as authorized in this section or a certified copy of the reproduction is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.
- (3) The custodian of the records shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: (1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430; amd. Sec. 8, Ch. 420, L. 1993; amd. Sec. 1, Ch. 94, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 94 in (1) substituted “pursuant to the requirements of 2-6-1012 and Title 2, chapter 6, part 12” for “only upon order of the district or probate court having jurisdiction”; in (2) at beginning substituted “A reproduction” for “The copy” and near middle substituted “of the reproduction” for “thereof”; in (3) at beginning substituted “The custodian of the records shall” for “It is the duty of the custodian of the records to”; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 420 in (1), after “7-4-2221”, deleted reference to subsection (1) and deleted “the original of which is not less than 10 years old”; in (2), at beginning after “The”, deleted “photostatic, microphotographic, or microfilmed”; and made minor changes in style. Amendment effective April 20, 1993.

7-4-2223. Duplicate records — safe storage of one copy.

- (1) Whenever any record or document is copied or reproduced as provided in 7-4-2221, it must be made in duplicate.
- (2) The custodian of the record or document shall place the master copy, the contents of the copy being first identified and indexed, in a fireproof vault or fireproof storage place. The custodian shall retain the other copy in the office with suitable equipment for reproducing the record or document for persons entitled to the record or document.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431; amd. Sec. 9, Ch. 420, L. 1993.

Part 1 Local Government Ordinances, Resolutions, and Initiatives and Referendums

Part Cross-References

Other similar powers for:

Option 2 of city-county consolidation, 7-3-1222 through 7-3-1232.

Municipal commission government, 7-3-4222.

Municipal commission-manager government, 7-3-4324 through 7-3-4327.

County resolutions, Title 7, ch. 5, part 22.

Municipal ordinances and resolutions, Title 7, ch. 5, part 42.

County ordinance restricting phosphorus sales, Title 75, ch. 7, part 4.

Part Law Review Articles

Ordinances and Regulations (City, County and Local Government Law: Recent Developments), Soffin, Berns, & Bryson, 33 Stetson L. Rev. 787 (2004).

Ordinances and Regulations (City, County and Local Government Law: Recent Developments), Combee, 30 Stetson L. Rev. 1197 (2001).

An Overview of the Impact of Major Environmental Law on Municipalities & Local Governments, Drake, Inst. on Plan. Zoning & Eminent Domain H4 (1996).

Helping States Cope With New Federal Mandates, Hill, 17 Nat'l L.J. D14 (1995).

7-5-101. Definition. As used in this part, “chief executive” means the elected executive in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101; amd. Sec. 460, Ch. 61, L. 2007.

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

7-5-103. Ordinance requirements.

- (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.
- (2) An ordinance passed may not contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances.
- (3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.
- (4) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5); amd. Sec. 461, Ch. 61, L. 2007.

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

7-5-107. Register of ordinances and codification.

- (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.
- (2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.
- (b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

7-5-108. Adoption and amendment of codes by reference.

- (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

- (2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.
- (3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.
- (4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.
- (5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.
- (6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

Administrative Rules

Title 24, chapter 301, subchapter 1, ARM Adoption and incorporation by reference of uniform and model codes having general applicability.

Title 24, chapter 301, subchapter 2, ARM Local government enforcement.

7-5-109. Penalty for violation of ordinance.

- (1) Except as provided in 7-5-4209 and subsection (2) of this section, a local government may fix penalties for the violation of an ordinance that do not exceed a fine of \$500 or 6 months' imprisonment or both the fine and imprisonment.
- (2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed \$1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104; amd. Sec. 1, Ch. 597, L. 1993; amd. Sec. 2, Ch. 415, L. 2013.

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements.

- (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.
- (2) Resolutions may be submitted and adopted at a single meeting of the governing body.
- (3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

Case Notes

Construction of Resolutions: The same rules of construction apply to official enactments by County Commissioners as apply to the construction of a statute. Mesa Communications Group, LLC v. Yellowstone County, 2002 MT 73, 309 M 233, 45 P3d 37 (2002).

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum.

- (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-135 and 7-5-137.
- (2) The powers of initiative do not extend to the following:
 - (a) the annual budget;
 - (b) bond proceedings, except for ordinances authorizing bonds;
 - (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds;
 - (d) the levy of special assessments pledged for the payment of principal and interest on bonds; or
 - (e) the prioritization of the enforcement of any state law by a unit of local government.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2); amd. Sec. 1, Ch. 161, L. 2011; amd. Sec. 76, Ch. 49, L. 2015.

Case Notes

Guidelines for Distinguishing Between Legislative and Administrative Acts of Local Government — Initiative and Referendum Power Reserved for Legislative Acts Only: Beginning with Billings v. Nore, 148 M 96, 417 P2d 458 (1966), the Supreme Court recognized a distinction between legislative acts, which are subject to the powers of initiative and referendum, and administrative or quasi-judicial acts, which are not. Because local governments are empowered by Art. XI, sec. 4, Mont. Const., to exercise legislative, administrative, and other powers, the question arose as to whether this section unconstitutionally limits local government referendum power to resolutions and ordinances within the legislative jurisdiction. In order to clarify the distinction between legislative and administrative acts of a local government, the Supreme Court adopted the following guidelines in Wichita v. Kans. Taxpayers Network, 874 P2d 667 (Kans. 1994): (1) An ordinance that makes new law is legislative, while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance. (2) Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative. (3) Decisions that require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in

order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of a policy. (4) No act of a governing body is likely to be solely administrative or legislative, and the operation of the initiative and referendum statute is restricted to measures that are quite clearly and fully legislative and not principally executive or administrative. In the present case, an ordinance that implemented the use of water meters as part of a town's water system improvement plan was an administrative act that was not subject to referendum. The District Court properly declared a referendum challenging the ordinance invalid. The Supreme Court affirmed the constitutionality of this section. Whitehall v. Preece, 1998 MT 53, 288 M 55, 956 P2d 743, 55 St. Rep. 219 (1998), followed in Phillips v. Whitefish, 2014 MT 186, 375 Mont. 456, 330 P.3d 442, and overruling Chouteau County v. Grossman, 172 M 373, 563 P2d 1125 (1977), and Dieruf v. Bozeman, 173 M 447, 568 P2d 127 (1977), to the extent that those decisions stand for the rule that a local government's act is administrative based solely on a statutory grant of authority.

7-5-132. Procedure for initiative or referendum election.

- (1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance. The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government's qualified electors is sufficient to require an election.
- (2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election on whether to amend or repeal the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors.
- (b) If an approved petition containing sufficient signatures is filed within 60 days after the effective date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.
- (3) The governing body may refer an existing or proposed ordinance to a vote of the people by resolution.
- (4) A petition or resolution for an election must:
 - (a) embrace only a single comprehensive subject;
 - (b) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment, or the ordinance to be repealed;
 - (c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and
 - (d) contain transition provisions if the measure changes terms of office or forms of government.
- (5) An election held pursuant to this section must be conducted in conjunction with the next local government election held in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.
- (6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal. History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979; amd. Sec. 2, Ch. 359, L. 1991; amd. Sec. 1, Ch. 374, L. 2001; amd. Sec. 77, Ch. 49, L. 2015; amd. Sec. 3, Ch. 242, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 242 in (5) near beginning inserted "in conjunction with the next local government election held". Amendment effective May 3, 2017.

2015 Amendment: Chapter 49 in (1) substituted current language regarding petition to request

an election pertaining to an ordinance for “The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition”; in (2)(a) substituted “an election on whether to amend or repeal” for “a referendum on”; in (2)(b) substituted language regarding suspension of an emergency ordinance upon filing of approved petition for “A petition requesting a referendum on an emergency ordinance filed within 60 days of the effective date of the ordinance suspends the ordinance until ratified by the electors”; deleted former (3)(d) that read: “(d) contain the signatures of 15% of the registered electors of the local government”; in (4) substituted “an election” for “initiative or referendum”; in (4)(b) substituted language regarding text of proposed ordinance, amendment, or repeal for former language that read: “set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed”; inserted (5) regarding election requirements and special election requirements; inserted (6) concerning effective date of proposal; and made minor changes in style. Amendment effective November 4, 2015.

2001 Amendment: Chapter 374 in (1) in second sentence near middle after first “effective date” inserted “or within 60 days after passage of the ordinance, whichever is later” and in third sentence near middle after “filed within” increased time for filing petition from 30 days to 60 days; and made minor changes in style. Amendment effective April 23, 2001.

1991 Amendment: In (1), near beginning of second sentence after “If”, substituted “an approved petition containing sufficient signatures if filed” for “submitted”; inserted (3)(e) requiring that a petition or resolution contain transition provisions in certain cases; and made minor changes in style.

7-5-133. Processing of petition.

- (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.
- (2) If the governing body does not within 60 days take the proposed action, then the question must be submitted to the electors at the next regular or primary election.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 24, Ch. 387, L. 1995.

7-5-134. Signatures — submission for approval — statement of purpose and implication.

- (1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.
- (2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form.
- (3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit. The local government attorney shall review the sample petition for form and compliance with 7-5-131 and 7-5-132 and prepare a concise ballot statement not exceeding 100 words. The ballot statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.
- (4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be

in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

[] FOR weekly commission meetings.

[] AGAINST weekly commission meetings.

- (5) If the petition is rejected as to form, the election administrator must send written notice and a statement of the reasons for rejection to the person who submitted the sample petition within 21 days after submission of the sample.
- (6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.
- (7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

History: (1)En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107;

(2)—(7)En. Secs. 1, 2, Ch. 69, L. 1981; amd. Sec. 3, Ch. 359, L. 1991.

Compiler's Comments

1991 Amendment: In (2) deleted second sentence requiring review of sample petition by election administrator; in (3), at end of first sentence, deleted "for preparation of the ballot statement" and in second sentence, after "shall", inserted "review the sample petition for form and compliance with 7-5-131 and 7-5-132 and"; in (5), after "notice", inserted "and a statement of the reasons for rejection" and increased time period for rejection notice from 10 days to 21 days; and made minor changes in style.

Attorney General's Opinions

Power of County Election Administrator to Reject Initiative Petition if Subject Matter Outside Scope of Initiative Process: A county election administrator, upon the advice of the County Attorney, may reject a sample initiative petition when it does not involve a matter subject to the initiative or referendum process. 45 A.G. Op. 5 (1993).

7-5-135. Suit to determine validity and constitutionality of petition and proposed action.

- (1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional. The suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.
- (2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.
- (3) If the defendant prevails, the defendant is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.
- (4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 1, Ch. 567, L. 1985; amd. Sec. 462, Ch. 61, L. 2007.

Case Notes

District Court Authority to Determine Constitutionality of Proposed County Ordinance: In 1994, Ravalli County voters passed three ordinances, seeking to control obscenity and the display and distribution of obscene material to minors. The ordinances were subsequently held unconstitutional, but in 2002, defendant again filed two proposed ordinances with the Ravalli County Clerk and Recorder, seeking to proscribe the same conduct. The county asked the District Court to rule on the constitutionality of the proposed ordinances pursuant to this section, but the court declined on grounds that: (1) the proposed ordinances were legislative rather than administrative and therefore valid under the Montana Constitution; (2) this section did not vest a District Court with jurisdiction to determine the constitutionality of an ordinance prior to adoption; (3) a suit is not a method by which a party may have a District Court prematurely consider the constitutionality of the subject matter of a proposed initiative or referendum prior to placement of the measure on the ballot; (4) ruling on a proposed ordinance would force the court to issue an advisory opinion on constitutionality in the absence of any defined basis for a constitutional attack; and (5) under *Hardy v. Progressive Specialty Ins. Co.*, 2003 MT 85, 315 M 107, 67 P3d 892 (2003), a preliminary ruling would allow the county to avoid the burden of showing the unconstitutionality of a legislative enactment beyond a reasonable doubt. The county appealed, and the Supreme Court reversed. The burden of proof requirement articulated in *Hardy* applies to constitutional challenges to existing statutes, not to proposed initiatives and referenda. Although the constitutionality of an enacted legislative statute is *prima facie* presumed, there is no presumption of validity of a proposed statute. Under the plain meaning of this section, a District Court must, after conducting any appropriate briefing and factfinding, determine whether a proposed ordinance would be constitutional and valid if passed. The case was remanded for substantive District Court review of the proposed ordinances. *Ravalli County v. Erickson*, 2004 MT 35, 320 M 31, 85 P3d 772 (2004).

Guidelines for Distinguishing Between Legislative and Administrative Acts of Local Government — Initiative and Referendum Power Reserved for Legislative Acts Only: Beginning with *Billings v. Nore*, 148 M 96, 417 P2d 458 (1966), the Supreme Court recognized a distinction between legislative acts, which are subject to the powers of initiative and referendum, and administrative or quasi-judicial acts, which are not. Because local governments are empowered by Art. XI, sec. 4, Mont. Const., to exercise legislative, administrative, and other powers, the question arose as to whether 7-5-131 unconstitutionally limits local government referendum power to resolutions and ordinances within the legislative jurisdiction. In order to clarify the distinction between legislative and administrative acts of a local government, the Supreme Court adopted the following guidelines in *Wichita v. Kans. Taxpayers Network*, 874 P2d 667 (Kans. 1994): (1) An ordinance that makes new law is legislative, while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance. (2) Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative. (3) Decisions that require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of a policy. (4) No act of a governing body is likely to be solely administrative or legislative, and the operation of the initiative and referendum statute is restricted to measures that are quite clearly and fully legislative and not principally executive or administrative. In the present case, an ordinance that implemented the use of water meters as part of a town's water system improvement plan was an administrative act that was not subject to referendum. The District Court properly declared a referendum challenging the ordinance invalid. The Supreme Court affirmed the constitutionality of 7-5-131. *Whitehall v. Preece*, 1998 MT 53, 288 M 55, 956 P2d 743, 55 St. Rep. 219 (1998), followed in *Phillips v. Whitefish*, 2014 MT 186, 375 Mont. 456, 330 P3d 442, and overruling *Chouteau County v. Grossman*, 172 M 373, 563 P2d 1125 (1977), and *Dieruf v. Bozeman*, 173 M 447, 568 P2d 127 (1977), to the extent that those decisions stand for the rule that a local government's act is administrative based solely on a statutory grant of authority.

7-5-136. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979; amd. Sec. 16, Ch. 250, L. 1985; amd. Sec. 25, Ch. 387, L. 1995.

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

7-5-138 and 7-5-139 reserved.

7-5-140. Recordkeeping. A city, town, or county that has the authority to require a private entity to keep records may prescribe the form and content of the records but may not prescribe the method of keeping the required records.

History: En. Sec. 16, Ch. 459, L. 1997.

TITLE 13 ELECTIONS

CHAPTER 1 GENERAL PROVISIONS

Part 5 Special District Elections

Part Cross-References

Special districts — creation and governance, Title 7, ch. 11, part 10.

13-1-501. Purpose — definition.

- (1) The purpose of this part is to consolidate, simplify, and standardize, to the extent feasible, dates and deadlines for special purpose district elections and to provide more consistency for election administrators and voters.
- (2) Nothing in this part may be interpreted to require the secretary of state to oversee special purpose district elections.
- (3) For the purposes of this part, “local government” has the meaning provided in 13-1-402.

History: En. Sec. 1, Ch. 49, L. 2015; amd. Sec. 10, Ch. 372, L. 2017.

Compiler’s Comments

2017 Amendment: Chapter 372 inserted (3) defining local government. Amendment effective July 1, 2017.

Effective Date: Section 264, Ch. 49, L. 2015, provided: “[This act] is effective the day after the date of the 2015 statewide general election.” Effective November 4, 2015.

13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation.

- (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days before the election.
- (2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).
- (3) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 65th day before the date of the election.
- (4) (a) Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body of the local government in writing of the cancellation. However, the governing body of the local government may by resolution require that the election be held.
- (b) For an election of conservation district supervisors held in conjunction with a federal primary or federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and immediately notify the governing body of the conservation district in writing of the cancellation. However, the governing body of the conservation district may, by no later than 10 days after the candidate filing deadline, pass a resolution to require that the election be held.

- (5) (a) If an election has been canceled and there is only one candidate for a position, the governing body of the local government or, if appropriate, of the conservation district shall declare the candidate elected to the position by acclamation.
- (b) Except as otherwise provided by law:
- (i) if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government or, if appropriate, of the conservation district shall fill the position by appointment;
- (ii) an appointed member shall serve the same term as if the member were elected.

History: En. Sec. 2, Ch. 49, L. 2015; amd. Sec. 9, Ch. 242, L. 2017; amd. Sec. 11, Ch. 372, L. 2017.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 242 in (3) at beginning deleted “Consistent with the deadline for write-in candidates under 13-10-211 for primary elections” and at end substituted “65th day before the date of the election” for “10th day before the date on which the ballot must be available for absentee or mail ballot voting under 13-1-503, as applicable”; in (4)(a) at beginning inserted exception clause; inserted (4)(b) concerning election of conservation district supervisors held in conjunction with federal primary or federal general election; and made minor changes in style. Amendment effective May 3, 2017.

Chapter 372 in (4)(a) at beginning inserted exception clause and near end inserted “of the local government” in two places; inserted (4)(b) concerning election of conservation district supervisors held in conjunction with federal primary or federal general election (identical to Ch. 242 except for addition of “of the conservation district” after “governing body” in two places); in (5)(a) and (5)(b)(i) after “governing body” inserted “of the local government or, if appropriate, of the conservation district”; and made minor changes in style. Amendment effective July 1, 2017.

Transition — Special Purpose District Officers — Terms of Office — Retroactive Applicability: Section 18, Ch. 242, L. 2017, provided: “An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.”

Effective Date: Section 264, Ch. 49, L. 2015, provided: “[This act] is effective the day after the date of the 2015 statewide general election.” Effective November 4, 2015.

13-1-503. Deadlines for absentee and mail ballots.

- (1) Pursuant to 13-13-205, ballots for a special purpose district election must be available for absentee voting at least 20 days before election day if the election is not conducted by mail.
- (2) Pursuant to 13-19-207, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day if the election is conducted by mail.

History: En. Sec. 3, Ch. 49, L. 2015.

Compiler's Comments

Effective Date: Section 264, Ch. 49, L. 2015, provided: “[This act] is effective the day after the date of the 2015 statewide general election.” Effective November 4, 2015.

13-1-504. Dates for special purpose district elections — call for election.

- (1) Except as provided in subsection (2), the following elections for a special purpose district must be held on the same day as the regular school election day established in 20-20-105(1), which is the first Tuesday after the first Monday in May:
 - (a) an election to create, alter the boundaries of, continue, or dissolve a special purpose district; and
 - (b) an election to fill a special purpose district office.
- (2) (a) A special purpose district election that includes a question affecting district funding, such as fee assessments, bonds, or the sale or lease of property, may be held on the day specified in subsection (1) or scheduled as a special election.
- (b) A conservation district election must be held on a primary or general election day.
- (3) If specifically authorized by law, a special purpose district election may be held at the district's annual meeting.
- (4) A special purpose district election may not be held earlier than 85 days after the date of the order or resolution calling for the election.
- (5) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.

History: En. Sec. 4, Ch. 49, L. 2015.

13-1-505. Conduct of elections.

- (1) A special purpose district election must be conducted by a county election administrator.
- (2) If a special purpose district lies in more than one county, the county election administrator in the county with the largest percentage of qualified electors in the district shall conduct the election.
- (3) Notice of the election must be provided as required in 13-1-108.
- (4) Subject to 13-19-104, a special purpose district election may be conducted by mail.
- (5) Unless otherwise specified by law, conduct of the election, voter registration, and how votes must be cast, counted, and canvassed for a special purpose election must be conducted in accordance with the applicable provisions of this title.

History: En. Sec. 5, Ch. 49, L. 2015.

13-1-506. Provision for vote by corporate or company property owner. If a corporation or company is a property owner entitled to vote under the specific laws governing a special district, the chief executive officer, president, vice president, authorized agent, or secretary of the corporation or company may exercise the right on behalf of the corporation or company.

History: En. Sec. 2, Ch. 121, L. 2015.

Criminal provisions relating to election supplies and ballots, Title 13, ch. 35.

Part 1 Ballots

13-12-201. Certification of candidate names and ballot issues for general election ballot.

- (1) Seventy-five days before a general election, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate who filed with the secretary of state and whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the secretary of state's office.
- (2) On certification from the secretary of state's office pursuant to subsection (1), the election administrator shall certify the name and party or other designation of each candidate whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the election administrator's office, and shall have the official ballots prepared.
- (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993; amd. Sec. 21, Ch. 414, L. 2003; amd. Sec. 8, Ch. 292, L. 2009; amd. Sec. 183, Ch. 49, L. 2015.

13-12-202. Ballot form and uniformity.

- (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:
 - (a) the manner in which each type of ballot may be corrected under 13-12-204;
 - (b) what provisions must be made on the ballot for write-in candidates;
 - (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
 - (d) how unvoted ballots must be handled;
 - (e) how the number of individuals voting and the number of ballots cast must be recorded; and
 - (f) the order and arrangement of voting system ballots.
- (2) The names of all candidates that appear on the face of a ballot must appear in the same font size and style.
- (3) Notwithstanding 13-19-106(1) and except as provided in 13-3-208, when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.
- (4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(5).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979; amd. Sec. 22, Ch. 414, L. 2003; amd. Sec. 26, Ch. 242, L. 2011; amd. Sec. 3, Ch. 325, L. 2019.

Cross-References

Nonpartisan candidates to appear on ballots, 13-14-117.

13-12-203. Appearance of candidate's name and party designation on ballot.

- (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite or below the name.
- (2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the word "Nonpartisan".
- (3) Except as otherwise provided by this section, information about the candidate other than the candidate's name may not appear on the ballot, including a title, accomplishment, award, or degree.

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979; amd. Sec. 23, Ch. 414, L. 2003; amd. Sec. 27, Ch. 242, L. 2011; amd. Sec. 1, Ch. 214, L. 2015.

13-12-204. Method of correction of ballot. If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been prepared but before the election, the election administrator may:

- (1) correct the ballot in a manner consistent with rules adopted under 13-12-202;
- (2) have the entire ballot redone; or
- (3) have a separate ballot prepared only for the office for which the new candidate is a candidate.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979; amd. Sec. 3, Ch. 85, L. 1997; amd. Sec. 24, Ch. 414, L. 2003.

13-12-205. Arrangement of names — rotation on ballot.

- (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.
- (2) (a) If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.
- (b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.
- (c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.
- (d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.
- (e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985; amd. Sec. 25, Ch. 414, L. 2003; amd. Sec. 14, Ch. 273, L. 2007.

Cross-References

Arrangement of ballot in primary election, 13-10-209.

Arrangement of names in conservation district election, 76-15-303.

13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 95, Ch. 368, L. 1969; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3512.

13-12-207. Order of placement.

- (1) The order on the ballot for state and federal offices must be as follows:
 - (a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.
 - (b) United States senator;
 - (c) United States representative;
 - (d) governor and lieutenant governor;
 - (e) secretary of state;
 - (f) attorney general;
 - (g) state auditor;
 - (h) state superintendent of public instruction;
 - (i) public service commissioners;
 - (j) clerk of the supreme court;
 - (k) chief justice of the supreme court;
 - (l) justices of the supreme court;
 - (m) district court judges;
 - (n) state senators;
 - (o) members of the Montana house of representatives.
- (2) The following order of placement must be observed for county offices:
 - (a) clerk of the district court;
 - (b) county commissioner;
 - (c) county clerk and recorder;
 - (d) sheriff;
 - (e) coroner;
 - (f) county attorney;
 - (g) county superintendent of schools;
 - (h) county auditor;
 - (i) public administrator;
 - (j) county assessor;
 - (k) county treasurer;
 - (l) surveyor;
 - (m) justice of the peace.
- (3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

- (4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.
- (5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.
- (6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.

History: Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979; amd. Sec. 13, Ch. 7, L. 2001; amd. Sec. 15, Ch. 273, L. 2007; amd. Sec. 28, Ch. 242, L. 2011.

13-12-208. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Sec. 97, Ch. 368, L. 1969; R.C.M. 1947, 23-3514; amd. Sec. 98, Ch. 571, L. 1979.

13-12-209. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977; R.C.M. 1947, 23-3515; amd. Sec. 99, Ch. 571, L. 1979.

13-12-210. Number of ballots to be provided for each precinct.

- (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.
- (2) The election administrator shall keep a record in the administrator's office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979; amd. Sec. 45, Ch. 56, L. 2009.

13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 90, Ch. 368, L. 1969; R.C.M. 1947, 23-3507.

13-12-212. Election administrator to provide official ballots — other ballots prohibited.

Each election administrator shall provide the official ballots for every election conducted by the election administrator. A ballot other than an official ballot may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979; amd. Sec. 26, Ch. 414, L. 2003.

13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(1) thru (3).

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: En. Sec. 102, Ch. 571, L. 1979.

TITLE 15 TAXATION

CHAPTER 10 Property Tax Levies

Part 4 Limitation on Property Taxes

Part Compiler's Comments

Initiative 105: On November 4, 1986, the voters approved Initiative 105 to limit certain property taxes to 1986 levels. The text of the initiative reads as follows:

"Section 1. Declaration of policy.

(1) The State of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of classes three, four, six, nine, twelve, and fourteen property, as those classes are defined in Title 15, ch. 6, part 1.

(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government, to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.

(5) The people of the State of Montana declare it is the policy of the State of Montana that no further property tax increases be imposed on property classes three, four, six, nine, twelve, and fourteen.

Section 2. Property tax limited to 1986 levels.

(1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed] may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) the limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, ch. 12, part 21; special improvement districts, Title 7, ch. 12, part 41; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) is subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.

Section 3. Contingent effective date.

(1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed]; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes."

Part Attorney General's Opinions

Approval of Informed Voters Sufficient to Allow Levy of Taxes in Excess of Statutory Limit: The

two conditions for overriding Initiative Measure No. 105 pursuant to 15-10-412 (now repealed) are: (1) that the governing body of the taxing unit passes a resolution containing seven specified findings, estimates, summaries, and statements; and (2) that following the resolution, the voters in the taxing unit approve the increase in tax liability. A particular type or level of financial emergency is not a condition of the statute. It is up to the voters to decide if the taxing unit's financial emergency is severe enough to warrant the remedy of suspending property tax limitations. Therefore, the approval of voters in a rural fire district, following a resolution of its board of directors, is sufficient to allow the Board of County Commissioners to continue to levy taxes in excess of the limitations of Initiative Measure No. 105 in following years, without subsequent voter approval each year thereafter, if the voters have been informed of the amount and duration of the increase in tax liability. 45 A.G. Op. 29 (1994).

Conservation Assessments Subject to Property Tax Limitations: Regular and special assessments by conservation districts are subject to the property tax limitations in this part. 42 A.G. Op. 73 (1988).

15-10-401. Declaration of policy.

- (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of all classes of property described in Title 15, chapter 6, part 1.
- (2) Except as provided in 15-10-420, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property. In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation.

History: En. Sec. 1, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 5, Ch. 463, L. 1997; amd. Sec. 92, Ch. 584, L. 1999.

15-10-402. Property tax limited to 1996 levels. Except as provided in 15-10-420, the amount of taxes levied on property described in Title 15, chapter 6, part 1, may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996.

History: En. Sec. 2, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 6, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 745, L. 1991; amd. Sec. 11, Ch. 773, L. 1991; amd. Sec. 7, Ch. 267, L. 1993; amd. Sec. 6, Ch. 463, L. 1997; amd. Sec. 93, Ch. 584, L. 1999.

15-10-403 through 15-10-405 reserved.

15-10-406. Limitation of applicability. The minimum tax imposed by 15-16-118 is not affected by the provisions of this part.

History: En. Sec. 2, Ch. 474, L. 1991.

Compiler's Comments

Applicability: Section 4, Ch. 474, L. 1991, provided: "[This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter."

15-10-407 through 15-10-410 reserved.

15-10-411. Repealed. Sec. 14, Ch. 463, L. 1997.

History: En. Sec. 1, Ch. 654, L. 1987.

15-10-412. Repealed. Sec. 171, Ch. 584, L. 1999.

History: En. Sec. 2, Ch. 654, L. 1987; amd. Sec. 2, Ch. 213, L. 1989; amd. Sec. 3, Ch. 636, L. 1989; amd. Sec. 1, Ch. 662, L. 1989; amd. Sec. 1, Ch. 5, Sp. L. June 1989; amd. Sec. 1, Ch. 6, Sp. L. June 1989; amd. Sec. 1, Ch. 7, Sp. L. June 1989; amd. Sec. 3, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 668, L. 1991; amd. Sec. 9, Ch. 680, L. 1991; amd. Sec. 4, Ch. 745, L. 1991; amd. Sec. 12, Ch. 773, L. 1991; amd. Sec. 8, Ch. 267, L. 1993; amd. Sec. 20, Ch. 333, L. 1993; amd. Sec. 1, Ch. 424, L. 1993; amd. Sec. 1, Ch. 483, L. 1993; amd. Sec. 30, Ch. 561, L. 1993; amd. Sec. 6, Ch. 573, L. 1993; amd. Sec. 1, Ch. 300, L. 1997; amd. Sec. 7, Ch. 463, L. 1997.

15-10-413 through 15-10-419 reserved.

15-10-420. Procedure for calculating levy.

- (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.
- (b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.
- (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.
- (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.
- (3) (a) For purposes of this section, newly taxable property includes:
 - (i) annexation of real property and improvements into a taxing unit;
 - (ii) construction, expansion, or remodeling of improvements;
 - (iii) transfer of property into a taxing unit;
 - (iv) subdivision of real property; and
 - (v) transfer of property from tax-exempt to taxable status.
- (b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.
- (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:
 - (i) a change in the boundary of a tax increment financing district;
 - (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
 - (iii) the termination of a tax increment financing district.
- (b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable

property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

- (c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.
- (d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).
- (5) Subject to subsection (8), subsection (1)(a) does not apply to:
 - (a) school district levies established in Title 20; or
 - (b) a mill levy imposed for a newly created regional resource authority.
- (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.
- (7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:
 - (a) may increase the number of mills to account for a decrease in reimbursements; and
 - (b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).
- (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.
- (9) (a) The provisions of subsection (1) do not prevent or restrict:
 - (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
 - (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
 - (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;
 - (iv) a levy for the support of a study commission under 7-3-184;
 - (v) a levy for the support of a newly established regional resource authority;
 - (vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703;
 - (vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary;
 - (viii) a levy used to fund the sheriffs' retirement system under 19-7-404(2)(b); or
 - (ix) a governmental entity from levying mills for the support of an airport authority in existence prior to May 7, 2019, regardless of the amount of the levy imposed for the support of the airport authority in the past. The levy under this subsection (9)(a)(ix) is limited to the amount in the resolution creating the authority.
- (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.
- (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

- (11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable value in a governmental unit.

History: En. Sec. 1, Ch. 584, L. 1999; amd. Secs. 6, 16(1), Ch. 11, Sp. L. May 2000; amd. Sec. 1, Ch. 191, L. 2001; amd. Sec. 1, Ch. 220, L. 2001; amd. Sec. 3, Ch. 361, L. 2001; amd. Sec. 3, Ch. 511, L. 2001; amd. Sec. 7, Ch. 571, L. 2001; amd. Sec. 94, Ch. 574, L. 2001; amd. Sec. 1, Ch. 115, L. 2003; amd. Sec. 1, Ch. 476, L. 2003; amd. Sec. 3, Ch. 376, L. 2005; amd. Sec. 3, Ch. 545, L. 2005; amd. Sec. 20, Ch. 521, L. 2007; amd. Sec. 26, Ch. 2, L. 2009; amd. Sec. 3, Ch. 57, L. 2009; amd. Sec. 27, Ch. 351, L. 2009; amd. Sec. 3, Ch. 412, L. 2009; amd. Sec. 9, Ch. 483, L. 2009; amd. Sec. 18, Ch. 347, L. 2011; amd. Sec. 2, Ch. 393, L. 2011; amd. Sec. 5, Ch. 411, L. 2011; amd. Sec. 22, Ch. 361, L. 2015; amd. Sec. 1, Ch. 328, L. 2017; amd. Sec. 7, Ch. 3, L. 2019; amd. Sec. 1, Ch. 332, L. 2019.

15-10-421 through 15-10-424 reserved.

15-10-425. Mill levy election.

- (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.
- (2) An election pursuant to this section must be held in accordance with Title 13, chapter 1, part 4 or 5, or Title 20 for school elections, whichever is appropriate to the taxing entity. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:
 - (a) the specific purpose for which the additional money will be used;
 - (b) either:
 - (i) the specific amount of money to be raised and the approximate number of mills to be imposed; or
 - (ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and
 - (c) whether the levy is permanent or the durational limit on the levy.
- (3) Notice of the election must be prepared by the governing body and given as provided in 13-1-108. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.
- (4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in either the amount or the number of mills specified in the resolution or charter amendment.
- (5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy.

History: En. Sec. 1, Ch. 495, L. 2001; en. Sec. 2, Ch. 574, L. 2001; amd. Sec. 1, Ch. 170, L. 2007; amd. Sec. 194, Ch. 49, L. 2015.

TITLE 18 PUBLIC CONTRACTS

CHAPTER 8 PROCUREMENT OF SERVICES

Part 2 Architectural, Engineering, and Land Surveying Services

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

History: En. Sec. 1, Ch. 51, L. 1987.

18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

- (1) "Agency" means a state agency, local agency, or special district.
- (2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.
- (3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.
- (4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.
- (5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.
- (6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts, sewer districts, and transportation districts.
- (7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government.

History: En. Sec. 2, Ch. 51, L. 1987; amd. Sec. 49, Ch. 51, L. 1999; amd. Sec. 5, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in definition of special district near middle after "fire districts" inserted "fire service areas"; and made minor changes in style. Amendment effective June 1, 2007.

1999 Amendment: Chapter 51 in definition of agency after "state agency" deleted "as defined in subsection (7)", after "local agency" deleted "as defined in subsection (4)", and after "special district" deleted "as defined in subsection (6)"; in definition of licensed professional at end deleted "and who is exempt under 18-8-103"; and made minor changes in style. Amendment effective March 15, 1999.

18-8-203. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

- (1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or
- (2) announcing generally to the public its projected requirement for any category or type of professional services.

History: En. Sec. 3, Ch. 51, L. 1987.

18-8-204. Procedures for selection.

- (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.
- (2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.
- (b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:
 - (i) the qualifications of professional personnel to be assigned to the project;
 - (ii) capability to meet time and project budget requirements;
 - (iii) location;
 - (iv) present and projected workloads;
 - (v) related experience on similar projects; and
 - (vi) recent and current work for the agency.
- (c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.
- (3) After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local agency may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local agency from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.
- (4) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 4, Ch. 51, L. 1987; amd. Sec. 5, Ch. 192, L. 2003; amd. Sec. 1, Ch. 56, L. 2007; amd. Sec. 1, Ch. 188, L. 2007; amd. Sec. 1, Ch. 308, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 308 inserted (3) providing for architectural, engineering, or land surveying services on as-needed basis for one or more projects; and made minor changes in style. Amendment effective May 4, 2017.

18-8-205. Negotiation of contract for services.

- (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.
- (2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.
- (3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 5, Ch. 51, L. 1987; amd. Sec. 6, Ch. 192, L. 2003; amd. Sec. 2, Ch. 56, L. 2007.

18-8-206 through 18-8-209 reserved.

18-8-210. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

18-8-211. Coordination with other statutes.

- (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.
- (2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.
- (3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

History: En. Sec. 6, Ch. 51, L. 1987; amd. Sec. 19, Ch. 443, L. 1997.

18-8-212. Exception.

- (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$50,000 may contract for those professional services by direct negotiation.
- (2) Except as provided in 18-8-204(3), an agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

History: En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993; amd. Sec. 1, Ch. 162, L. 2003; amd. Sec. 2, Ch. 308, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 308 in (1) substituted "\$50,000" for "\$20,000"; in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 4, 2017.

2003 Amendment: Chapter 162 in (1) increased estimated fees from \$10,000 to \$20,000; and made minor changes in style. Amendment effective March 28, 2003.

1993 Amendments: Chapter 22 in (1) inserted second sentence exempting procurement of services for the honors college program building; and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 in (1) increased "\$5,000" to "\$10,000"; and made minor changes in style. Amendment effective April 24, 1993.

TITLE 23 PARKS, RECREATION, SPORTS, AND GAMBLING

CHAPTER 2 RECREATION

Part 3 Recreational Use of Streams

Part Compiler's Comments

Case Law: The rights and liabilities of landowners and the public regarding recreational use of streams were the subject of extensive discussion and holdings in Mont. Coalition for Stream Access, Inc. v. Hildreth, 211 M 29, 684 P2d 1088, 41 St. Rep. 1192 (1984), relating to the Beaverhead River, and Mont. Coalition for Stream Access, Inc. v. Curran, 210 M 38, 682 P2d 163, 41 St. Rep. 906 (1984), relating to the Dearborn River. This part 3 is the legislative reaction to those two cases and the questions and problems they discuss.

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Smith River Management Act, Title 23, ch. 2, part 4.
Owner of land bounded by water, 70-16-201.
Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.
Title by prescription, 70-19-405.
Aquatic ecosystem protections, Title 75, ch. 7.
Public ways, 85-1-111.
Navigable waters, 85-1-112.
Surface water and ground water, Title 85, ch. 2.
Fish and Wildlife, Title 87.
Navigable waters subject to fishing rights, 87-2-305.

Part Administrative Rules

Title 12, chapter 4, subchapter 1, ARM Management of recreational use of streams and rivers.

Part Attorney General's Opinions

Right to Trap on Streams Not Governed by Stream Access Law: The right to trap fur-bearing animals between the ordinary high-water marks of a stream is not governed by Title 23, ch. 2, part 3, but rather is dependent upon whether the trapper has license, invitation, or privilege to enter or remain upon land and whether the trapper has secured a license to trap. 41 A.G. Op. 36 (1985).

Part Law Review Articles

Stream Access in Montana and the Dispute Over Public Recreation on the Mitchell Slough, O'Connell, 71 Mont. L. Rev. 433 (2010).
Public Use of the Banks and Beds of Montana Streams, Stone, 52 Mont. L. Rev. 107 (1991).
The Remarkable Odyssey of Stream Access in Montana, Lane, 36 Pub. Land & Resources L. Rev. 69 (2015).
Preserving Stream Flows in Montana Through the Constitutional Public Trust Doctrine: An Underrated Solution, Clifford, 16 Pub. Land L. Rev. 117 (1995).
Stream Access in Montana After Galt v. State, Hunter, 8 Pub. Land L. Rev. 177 (1987).
Ownership of Abandoned Navigable Riverbeds: To Whom Does the Windfall Blow?, DePuy, 8 Pub. Land L. Rev. 115 (1987).

23-2-301. Definitions. For purposes of this part, the following definitions apply:

- (1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.
- (2) "Class I waters" means surface waters, other than lakes, that:
 - (a) lie within the officially recorded federal government survey meander lines of the waters;
 - (b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;
 - (c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or
 - (d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.
- (3) "Class II waters" means all surface waters that are not class I waters, except lakes.
- (4) "Commission" means the fish and wildlife commission provided for in 2-15-3402.
- (5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.
- (6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:
 - (a) an irrigation or drainage canal or ditch;
 - (b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;
 - (c) a flood control channel; or
 - (d) a hydropower inlet and discharge facility.
- (7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.
- (8) "Occupied dwelling" means a building used for a human dwelling at least once a year.
- (9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.
- (10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.
- (11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.
- (12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 360, Ch. 56, L. 2009; amd. Sec. 15, Ch. 235, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 235 in definition of commission substituted "fish and wildlife commission" for "fish, wildlife, and parks commission". Amendment effective July 1, 2013.

Saving Clause: Section 40, Ch. 235, L. 2013, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Name Change: Section 2, Ch. 28, L. 1991, directed the Code Commissioner to change the name of the Fish and Game Commission to the Fish, Wildlife, and Parks Commission wherever the name appears in the MCA. Accordingly, the name was changed in this section as directed.

Composite Section: Chapter 429 and Ch. 556, L. 1985, each contained very similar provisions restricting public recreational use of diverted waters. Composite sections were prepared by the Code Commissioner. The provisions of Ch. 429 were merged with this section and 23-2-302, and language contained in Ch. 429 but not contained in Ch. 556 was added to this section and 23-2-302. Specifically, in (6)(b) after "water system", the phrase from Ch. 429 "excluding the lake, stream, or reservoir from which the system obtains water" was inserted because Ch. 429 was more restrictive on this point. The intent of Ch. 429 is preserved in (6) of this section and 23-2-302(2). Chapter 429, L. 1985, provided: "Recreational use of diverted surface waters prohibited. The right of the public to make recreational use of surface waters does not include the right to make recreational use of the following surface waters without permission or contractual arrangement with the owner:

- (1) irrigation and drainage canals and ditches;*
- (2) manmade flood control channels;*
- (3) municipal, industrial, and domestic water systems, excluding the lakes, streams, and reservoirs from which the systems obtain water;*
- (4) hydroelectric power inlet and discharge facilities; or*
- (5) any other waters while they are diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access."*

Cross-References

Recreational purposes defined, 70-16-301.

Flood plain and floodway management, Title 76, ch. 5.

Attorney General's Opinions

Snowmobiling on Frozen Streams — Landowner Permission Necessary: Landowner permission is required for snowmobiling on the frozen surfaces of streams. 41 A.G. Op. 36 (1985).

Trapping Not "Recreational Use": As defined in this section, "recreational use" does not include the trapping of fur-bearing animals on state waters. 41 A.G. Op. 36 (1985).

23-2-302. Recreational use permitted — limitations — exceptions.

- (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.
- (2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:
 - (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;
 - (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

- (c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;
 - (d) big game hunting;
 - (e) overnight camping unless it is necessary for the enjoyment of the surface water and the campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied dwelling, whichever is less;
 - (f) the placement or creation of any permanent duck blind, boat moorage, or any other permanent object;
 - (g) the placement or creation of any seasonal object, such as a duck blind or boat moorage, unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less;
 - (h) use of a streambed as a right-of-way for any purpose when water is not flowing in the streambed.
- (3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:
- (a) big game hunting;
 - (b) overnight camping;
 - (c) the placement or creation of any seasonal object; or
 - (d) other activities that are not primarily water-related pleasure activities as defined in 23-2-301(10).
- (4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use those waters for recreational purposes.
- (5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:
- (a) the establishment of procedures by which any person may request an order from the commission:
 - (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or
 - (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;
 - (b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and
 - (c) a procedure for the identification of streams within class II waters that are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.
- (6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of those lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985; amd. Sec. 1, Ch. 327, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 327 in (2)(d) after "hunting" deleted "except by long bow or shotgun when specifically authorized by the commission"; substituted (2)(e), (2)(f), and (2)(g) concerning overnight camping and permanent or seasonal objects for former (2)(e) and (2)(f) that read: "(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other

objects within sight of or within 500 yards of an occupied dwelling, whichever is less”; and made minor changes in style. Amendment effective April 27, 2015.

Preamble: The preamble attached to Ch. 327, L. 2015, provided: “WHEREAS, in 1985, in response to court decisions on stream access, the Legislature enacted laws governing the recreational use of streams; and

WHEREAS, in 1987 the Montana Supreme Court declared unconstitutional certain provisions of the laws governing the recreational use of streams in the case of *Galt v. St.* No. 86-178; and

WHEREAS, these unconstitutional provisions remain as part of the Montana Code Annotated; and

WHEREAS, amendments to the law are necessary to remove these unconstitutional provisions.” Severability: Section 3, Ch. 327, L. 2015, was a severability clause.

Composite Section: Chapter 429 and Ch. 556, L. 1985, each contained very similar provisions restricting public recreational use of diverted waters. Composite sections were prepared by the Code Commissioner. The provisions of Ch. 429 were merged with this section and 23-2-301, and language contained in Ch. 429 but not contained in Ch. 556 was added to this section and 23-2-301. Specifically, in (2) in the lead-in, after “without permission”, the word “of” was deleted and the phrase “or contractual arrangement with” was inserted, and at the end of (2)(c), after “3”, the phrase “except for impoundments or diverted waters to which the owner has provided public access” was inserted. These phrases from Ch. 429 were inserted because Ch. 429 was more broad on the first point and more restrictive on the second point than was Ch. 556. The intent of Ch. 429 is preserved in (2) of this section and 23-2-301(6). Chapter 429, L. 1985, provided: “Recreational use of diverted surface waters prohibited. The right of the public to make recreational use of surface waters does not include the right to make recreational use of the following surface waters without permission or contractual arrangement with the owner:

- (1) irrigation and drainage canals and ditches;
- (2) manmade flood control channels;
- (3) municipal, industrial, and domestic water systems, excluding the lakes, streams, and reservoirs from which the systems obtain water;
- (4) hydroelectric power inlet and discharge facilities; or
- (5) any other waters while they are diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access.”

Statement of Intent: The statement of intent attached to Ch. 556, L. 1985, provided: “A statement of intent is required for House Bill 265 [Ch. 556, L. 1985] because section 2(5) [23-2-302(5)] directs the fish and game commission [now fish, wildlife, and parks commission] to adopt rules governing recreational use of surface waters.

In its implementation of this bill, the long-range goal of the commission must be to preserve, protect, and enhance the surface waters of this state while facilitating the public’s exercise of its recreational rights on surface waters. The commission shall strive to permit broad exercise of public rights, while protecting the water resource and its ecosystem. In adopting the procedural rules required by section 2 [23-2-302(5)], the commission shall emphasize that in close cases the decision must be to protect the environment by restricting or continuing to restrict recreational use, since it is easier to prevent environmental degradation than it is to repair it.

In developing the rules implementing House Bill 265 [Ch. 556, L. 1985], the commission shall make every effort to make the process uncomplicated and clear. As provided in subsection (5)(b) [23-2-302(5)(b)], the commission must issue written findings and an order whenever a request is made for restrictions on recreational use of a surface water or for the lifting of previously imposed limitations on recreational use of a surface water. The commission may adopt rules providing for summary dismissal of requests when a substantially similar request has been received and acted upon within a brief time prior to the second or subsequent requests if, during the time period since the first request, it is unlikely that there has been a change in the situation upon which the commission based its earlier decision.

In developing the rules establishing criteria for determination upon a request made under subsections (5)(a) [23-2-302(5)(a)] or (5)(b) [23-2-302(5)(b)], the commission shall require that each of the following factors that is relevant to the decision must be considered in the determination:

- (a) whether public use is damaging the banks and land adjacent to the water body;*
- (b) whether public use is damaging the property of landowners underlying or adjacent to the water body;*
- (c) whether public use is adversely affecting wildlife or birds;*
- (d) whether public use is disrupting or altering natural areas or biotic communities;*
- (e) whether public use is causing degradation of the water quality of the water body; and*
- (f) any other factors relevant to the preservation of the water body in its natural state.*

In making its decision after a request has been made for restrictions of recreational use, the commission may impose any reasonable limitation on the recreational use of surface waters including complete prohibition of a particular type of recreation, prohibition of a particular type of recreation in certain specified areas, such as within a specified distance of a residence or other structure, or in an appropriate case, prohibition of all recreation. The commission shall prohibit all recreation on private impoundments that have been licensed for a private use.

The commission shall protect the safety of the public by prohibiting hunting within a specified distance of occupied dwellings.”

Cross-References

Access to surface waters by public bridge or county road right-of-way, 23-2-312.

Regulation of snowmobiles, Title 23, ch. 2, part 6.

Definition of enter or remain unlawfully, 45-6-201.

Migratory game birds hunting stamp, 87-2-411.

Hunting licenses, Title 87, ch. 2, part 5.

Administrative Rules

Title 12, chapter 4, subchapter 1, ARM Management of recreational use of streams and rivers.

Case Notes

District Court in Error When Concluding That Mitchell Slough Was Not Natural Water Body: The District Court's use of the dictionary definition of "natural" as pristine and unaffected by humans in relation to the stream access laws under Title 23, chapter 2, part 3, leads to an absurd result that prohibits the very public recreational access it was designed to allow. The proper conclusion is that the return flows that find their way to and join the flow in the Mitchell Slough's historic channel are to be appropriately analyzed as freed, appropriative waters. Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

Public Recreational Use Rights Statute — Constitutionality: Following Curran and Hildreth decisions, which held that the public trust doctrine provides the public with a constitutional right to use the bed and banks of navigable streams up to the high-water mark despite a landowner's fee title, the Legislature enacted a statute providing public recreational use of streams. Plaintiff filed suit requesting the court to declare the recreational use statute an unconstitutional taking of private property without just compensation. Plaintiff then appealed after the trial court upheld the statute's constitutionality and awarded the state summary judgment. The Supreme Court ruled unconstitutional 23-2-302(2)(d), (2)(e), and (2)(f), which provided the public a right to hunt big game, build duck blinds and boat moorages, and camp overnight so long as not within sight of an occupied dwelling or within 500 yards of an occupied dwelling, whichever is less. The court further held as unconstitutional 23-2-311(3)(e), which required a landowner to pay costs of constructing a portage route around artificial barriers. The public has a right of use of the bed and banks up to the high-water mark but only such use as is necessary to utilization of the water itself. Any use of the bed and banks must be of minimal impact. Galt v. St., 225 M 142, 731 P2d 912, 44 St. Rep. 103 (1987), followed in Bitterroot River Protective Assoc., Inc.

v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008). See also *Pub. Lands Access Ass'n, Inc. v. Madison County Bd. of Comm'rs*, 2014 MT 10, 373 Mont. 277, 321 P.3d 38.

Attorney General's Opinions

Access to Rivers and Streams Via County Road Right-of-Way and Bridges: Given that the public has the right to use public highways in any manner and for any purpose consistent with or reasonably incidental to public travel, this right includes the use of public rights-of-way created by county roads to gain access to rivers and streams. Using a county road right-of-way as an access point to a river or stream right-of-way is consistent with and reasonably incidental to the public's right to travel on county roads. Further, a bridge and its abutments, as part of a public highway, offer the same access to rivers and streams for recreational use as the highway to which they are attached. However, the public's right of access is not unlimited and is subject to the following limitations: (1) the recreating public must stay within the county road and bridge right-of-way, which is assumed to be 60 feet unless otherwise stated by petition or dedication; (2) access may be limited by the reasonable exercise of a governing body's police power to control the use of roads for purposes such as safety and parking; and (3) use of a public highway may be limited by the manner in which it was created, such as a road created by prescriptive easement, which is limited both in size and usage to the original use during the prescriptive period and may include access for hunting, fishing, and recreation. 48 A.G. Op. 13 (2000).

Right to Trap on Streams Not Governed by Stream Access Law: The right to trap fur-bearing animals between the ordinary high-water marks of a stream is not governed by Title 23, ch. 2, part 3, but rather is dependent upon whether the trapper has license, invitation, or privilege to enter or remain upon land and whether the trapper has secured a license to trap. 41 A.G. Op. 36 (1985).

Snowmobiling on Frozen Streams — Landowner Permission Necessary: Landowner permission is required for snowmobiling on the frozen surfaces of streams. 41 A.G. Op. 36 (1985).

Law Review Articles

Stream Access in Montana and the Dispute Over Public Recreation on the Mitchell Slough, O'Connell, 71 Mont. L. Rev. 433 (2010).

Legal Background on Recreational Use of Montana Waters, Stone, 32 Mont. L. Rev. 1 (1971).

Private Wetlands and Public Values: "Navigable Waters" and the Significant Nexus Test Under the Clean Water Act, Schmidt, 26 Pub. Land & Resources L. Rev. 97 (2005).

The Shadow of the Mono Lake Decision, Summerville, 6 Pub. Land L. Rev. 203 (1985).

Tribal Bedlands Claims Since Montana v. U.S., Cole, 6 Pub. Land L. Rev. 119 (1985).

Forging Public Rights in Montana's Waters, Thorson, Brown, & Desmond, 6 Pub. Land L. Rev. 1 (1985).

Recreational Use of Montana's Waterways: An Analysis of Public Rights, 3 Pub. Land L. Rev. 133 (1982).

In the Aftermath of the Bighorn River Decision: Montana Has Title, Indian Law Doctrines Are Clouded, and Trust Questions Remain, Arnott, 2 Pub. Land L. Rev. 1 (1981).

Collateral References

Recreational Use of Montana's Waterways, A Report to the 49th Legislature, Montana Legislative Council, December 1984.

Water Rights Adjudication/Stream Access for Recreational Use, State Bar of Montana, November 1984.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.

Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route.

- (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of the landowner's rights.
- (2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure that does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.
- (3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.
- (b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that a route be established.
- (c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.
- (d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.
- (e) The cost of establishing the portage route around artificial barriers must be borne by the department, including the cost of construction of notification signs of the route.
- (f) Once the route is established, the department has the exclusive responsibility to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.
- (g) If either the landowner or the recreationist disagrees with the route described in subsection (3)(e), the person may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).
- (h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbi-

tration panel, computed as for jurors' fees under 3-15-201, must be borne by the contesting party or parties. All other parties shall bear their own costs.

- (i) The determination of the arbitration panel may be appealed within 30 days to the district court.
 - (j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.
- (4) This part does not address the issue of natural barriers or portage around the barriers, and this part does not make the portage lawful or unlawful.

History: En. Sec. 3, Ch. 556, L. 1985; amd. Sec. 361, Ch. 56, L. 2009; amd. Sec. 2, Ch. 327, L. 2015.

Case Notes

Public Recreational Use Rights Statute — Constitutionality: Following Curran and Hildreth decisions, which held that the public trust doctrine provides the public with a constitutional right to use the bed and banks of navigable streams up to the high-water mark despite a landowner's fee title, the Legislature enacted a statute providing public recreational use of streams. Plaintiff filed suit requesting the court to declare the recreational use statute an unconstitutional taking of private property without just compensation. Plaintiff then appealed after the trial court upheld the statute's constitutionality and awarded the state summary judgment. The Supreme Court ruled unconstitutional 23-2-302(2)(d), (2)(e), and (2)(f), which provided the public a right to hunt big game, build duck blinds and boat moorages, and camp overnight so long as not within sight of an occupied dwelling or within 500 yards of an occupied dwelling, whichever is less. The court further held as unconstitutional 23-2-311(3)(e), which required a landowner to pay costs of constructing a portage route around artificial barriers. The public has a right of use of the bed and banks up to the high-water mark but only such use as is necessary to utilization of the water itself. Any use of the bed and banks must be of minimal impact. Galt v. St., 225 M 142, 731 P2d 912, 44 St. Rep. 103 (1987). See also Pub. Lands Access Ass'n, Inc. v. Madison County Bd. of Comm'rs, 2014 MT 10, 373 Mont. 277, 321 P.3d 38.

23-2-312. Access to surface waters by public bridge or county road right-of-way.

- (1) A person may gain access to surface waters for recreational use by using:
 - (a) a public bridge, its right-of-way, and its abutments; and
 - (b) a county road right-of-way.
- (2) When accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached.
- (3) The provisions in 7-14-2134, 23-2-313, and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on April 13, 2009.
- (4) For purposes of determining liability, a person accessing surface waters for recreational use pursuant to this section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes willful or wanton misconduct.

History: En. Sec. 2, Ch. 201, L. 2009.

Compiler's Comments

Preamble: The preamble attached to Ch. 201, L. 2009, provided: "WHEREAS, the Legislature finds that significant controversy has existed related to public access to streams and rivers from county road and bridge rights-of-way; and

WHEREAS, a Montana Attorney General's Opinion in 2000 (48 A.G. Op. 13) held that the use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public's right to travel on county roads and that the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments; and

WHEREAS, during the 2007-08 interim a group of stakeholders met to address the controversy and agreed in principle that a legislative solution was preferable and that past legislative attempts may have failed because they were overly complex; and

WHEREAS, the stakeholders also agreed in principle that any proposed legislation needed to provide:

- (1) that a fence in a county road right-of-way abutting a bridge should not be considered an encroachment;*
- (2) that the public may access streams and rivers from a county road or bridge right-of-way, but that the public must stay in the right-of-way to gain access;*
- (3) that the legislation neither create any right nor extinguish any right related to county roads established by prescriptive use that exist at the time of passage;*
- (4) a process to define the physical characteristics of a fence used for public access in county road and bridge rights-of-way; and*
- (5) an approach with broad scope rather than an attempt to resolve a myriad of possible contingencies; and*

WHEREAS, the stakeholders determined that each of these provisions was integral to the others and that if any section of the proposed legislation containing the agreed-upon principles was removed, the entire legislation should be void."

Nonseverability: Section 5, Ch. 201, L. 2009, was a nonseverability clause.

Effective Date: Section 6, Ch. 201, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 13, 2009.

23-2-313. Fencing for livestock control and public passage — negotiation — costs.

- (1) At county road bridges for which public access is authorized pursuant to 23-2-312, each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(4) must provide for public passage to surface waters for recreational use pursuant to this section.
- (2) (a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:
 - (i) a stile;
 - (ii) a gate;
 - (iii) a roller;
 - (iv) a walkover;
 - (v) a wooden rail fence that provides for passage; or
 - (vi) any other method designed for public passage and livestock control or property management.
- (b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.
- (c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department

shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

- (3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

History: En. Sec. 3, Ch. 201, L. 2009.

Cross-References

Legal fences defined, 81-4-101.

23-2-314 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor.

- (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, the landowner's agent, or the landowner's tenant other than that provided in subsection (2).
- (2) A landowner, the landowner's agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.
- (3) A supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is not liable to a person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987; amd. Sec. 362, Ch. 56, L. 2009.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters.

- (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.
- (2) A prescriptive easement cannot be acquired through:
 - (a) recreational use of surface waters, including:
 - (i) the streambeds underlying them;
 - (ii) the banks up to the ordinary high-water mark; or
 - (iii) any portage over and around barriers; or
 - (b) the entering or crossing of private property to reach surface waters.

History: En. Sec. 5, Ch. 556, L. 1985.

Compiler's Comments

Applicability: Section 10, Ch. 556, L. 1985, provided: "Sections 5 [23-2-322] and 6 [amending 70-19-405] apply only to a prescriptive easement that has not been perfected prior to [the effective date of this act]." The act was effective April 19, 1985.

Cross-References

Title by prescription, 70-19-405.

Case Notes

Adverse Possession — Requirements Not Met When Boundary Unascertained: While a property boundary line was unascertained, there could be no “open . . . notorious, hostile, adverse” use necessary under this section to establish a prescriptive easement. Zavarelli v. Might, 230 M 288, 749 P2d 524, 45 St. Rep. 211 (1988).

TITLE 27 CIVIL LIABILITY, REMEDIES, AND LIMITATIONS

CHAPTER 5 UNIFORM ARBITRATION ACT

Part 1 Submission to Arbitration

Part Cross-References

Multistate Tax Compact — Article IX arbitration provisions, 15-1-601.

Arbitration of stream portage rights, 23-2-311.

Statute of limitations tolled by submission to arbitration, 27-2-405.

Medical malpractice claims — effect of arbitration, 27-6-105.

Chiropractic malpractice claims — arbitration, 27-12-105.

Arbitration of farm mutual insurance claims, 33-4-411.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

Arbitration of hail insurance claims, 80-2-243.

Arbitration of watercourse construction projects adversely affecting fish and game habitat, 87-5-505.

27-5-101. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1281; re-en. Sec. 9972, R.C.M. 1935; R.C.M. 1947, 93-201-1.

27-5-102. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1282; re-en. Sec. 9973, R.C.M. 1935; R.C.M. 1947, 93-201-2.

27-5-103. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-104. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-105. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 311, p. 109, Bannack Stat.; re-en. Sec. 367, p. 209, L. 1867; re-en. Sec. 441, p. 123, Cod. Stat. 1871; re-en. Sec. 468, p. 165, L. 1877; re-en. Sec. 468, 1st Div. Rev. Stat. 1879; re-en. Sec. 481, 1st Div. Comp. Stat. 1887; re-en. Sec. 2279, C. Civ. Proc. 1895; re-en. Sec. 7374, Rev. C. 1907; re-en. Sec. 9981, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1290; re-en. Sec. 9981, R.C.M. 1935; R.C.M. 1947, 93-201-10.

27-5-106 through 27-5-110 reserved.**27-5-111. Short title.** This chapter may be cited as the “Uniform Arbitration Act”.

History: En. Sec. 1, Ch. 684, L. 1985.

Compiler’s Comments

Source: Section 23, Uniform Arbitration Act, 7 U.L.A. 228.

27-5-112. Uniformity of interpretation. This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

History: En. Sec. 2, Ch. 684, L. 1985.

Compiler’s Comments

Source: Section 21, Uniform Arbitration Act, 7 U.L.A. 227.

Law Review Articles

The Arbitration Alternative: Its Time Has Come, Faure, 46 Mont. L. Rev. 199 (1985).

27-5-113. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-115, 27-5-311, 27-5-312(1) and (3) through (5), 27-5-313, and 27-5-322 apply in each case.

History: En. Sec. 3, Ch. 684, L. 1985; amd. Sec. 1, Ch. 258, L. 1991.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

Arbitration of public employees’ collective bargaining issue, 39-31-310.

Arbitration of firefighters’ collective bargaining issue, Title 39, ch. 34, part 1.

27-5-114. Validity of arbitration agreement — exceptions.

- (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.
- (2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:
 - (a) claims arising out of personal injury, whether based on contract or tort;
 - (b) any contract by an individual for the acquisition of real or personal property, services, or money or credit when the total consideration to be paid or furnished by the individual is \$5,000 or less;

- (c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or
 - (d) claims for workers' compensation.
- (3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989; amd. Sec. 1, Ch. 19, L. 1997.

27-5-115. Proceedings to compel or stay arbitration.

- (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.
- (2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.
- (3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.
- (4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
- (5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

Compiler's Comments

Source: Section 2, Uniform Arbitration Act, 7 U.L.A. 68.

Cross-References

Statute of limitations tolled by submission to arbitration, 27-2-405.

27-5-116. Short title — neutral arbitrator's disclosure required.

- (1) This section may be cited as the "Fairness in Arbitration Act".
- (2) Beginning October 1, 2009, a person who has been proposed, nominated, or appointed as a neutral arbitrator pursuant to an arbitration agreement, other than one contained in a collective bargaining agreement, shall comply with the requirements of this section.
- (3) A person who has been proposed, nominated, or appointed as a neutral arbitrator for an arbitration proceeding shall disclose to each party all matters that could cause a person

aware of the facts underlying a potential conflict of interest to have a reasonable doubt that the person would be able to act as a neutral or impartial arbitrator.

- (4) In addition to any matters disclosed pursuant to subsection (3), the person proposed, nominated, or appointed shall disclose:
- (a) the existence, regarding the person, of any ground specified in 3-1-803 for disqualification of a judge;
 - (b) whether the person has been employed by a party to the arbitration proceeding within the last 5 years;
 - (c) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or
(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion;
 - (ii) regarding the information disclosed pursuant to subsection (4)(c)(i), as appropriate, the:
 - (A) date of the arbitration award;
 - (B) identification of the prevailing party;
 - (C) names of the parties' attorneys; and
 - (D) amount of monetary damages awarded, if any;
 - (d) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion; or
(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion;
 - (ii) regarding the information disclosed pursuant to subsection (4)(d)(i), as appropriate, the:
 - (A) date of the arbitration award;
 - (B) identification of the prevailing party;
 - (C) identification of the person and the party who selected the person to serve as a neutral arbitrator, if any;
 - (D) names of the parties' attorneys; and
 - (E) amount of monetary damages awarded, if any; and
 - (e) any attorney-client relationship the person has or has had with a party or an attorney for a party to the arbitration proceeding within the last 5 years.
- (5) In order to preserve confidentiality, it is sufficient for the purposes of subsections (4)(c) and (4)(d) for the person to identify any party who is not a party to the pending arbitration proceeding as "claimant" or "respondent" if that party is or was an individual and not a business or corporate entity.
- (6) The person proposed, nominated, or appointed as a neutral arbitrator shall make the disclosure required by this section in writing to all parties by serving a disclosure upon the parties within 10 days of any notice of the person's proposal, nomination, or appoint-

ment. The disclosure must be served in accordance with Title 25, chapter 3, part 2.

- (7) An arbitration proceeding does not include an arbitration proceeding pursuant to a collective bargaining agreement.
- (8) This section does not apply to:
 - (a) arbitration agreements that have been approved by the United States security and exchange commission pursuant to the Securities and Exchange Act of 1934; or
 - (b) arbitrations conducted by the Montana bar association's voluntary fee arbitration program.

History: En. Sec. 1, Ch. 339, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 2 Action by Arbitrators

27-5-201. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; R.C.M. 1947, 93-201-5(part).

27-5-202. Repealed. Sec. 28, Ch. 684, L. 1985.

History: Ap. p. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1284; re-en. Sec. 9975, R.C.M. 1935; Sec. 93-201-4, R.C.M. 1947; Ap. p. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; Sec. 93-201-5, R.C.M. 1947; R.C.M. 1947, 93-201-4, 93-201-5(part).

27-5-203. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part).

27-5-204 through 27-5-210 reserved.

27-5-211. Appointment of arbitrators — conflict of interest provisions applicable.

Except as provided in 27-5-116, if the arbitration agreement provides a method of appointment of arbitrators, this method must be followed. If a method is not provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and the arbitrator's successor has not been appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. A neutral arbitrator appointed by the district court on or after October 1, 2009, shall comply with the provisions of 27-5-116.

History: En. Sec. 6, Ch. 684, L. 1985; amd. Sec. 604, Ch. 56, L. 2009; amd. Sec. 2, Ch. 339, L. 2009.

27-5-212. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

History: En. Sec. 7, Ch. 684, L. 1985.

Compiler's Comments

Source: Section 4, Uniform Arbitration Act, 7 U.L.A. 99.

27-5-213. Hearing. Unless otherwise provided by the agreement, the following apply:

- (1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
- (2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.
- (3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History: En. Sec. 8, Ch. 684, L. 1985.

27-5-214. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right prior to the proceeding or hearing is ineffective.

History: En. Sec. 9, Ch. 684, L. 1985.

Compiler's Comments

Source: Section 6, Uniform Arbitration Act, 7 U.L.A. 113.

27-5-215. Witnesses, subpoenas, and depositions.

- (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.
- (2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- (3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.
- (4) Fees for attendance as a witness are the same as for a witness in the district court.

History: En. Sec. 10, Ch. 684, L. 1985.

27-5-216. Award.

- (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.
- (2) An award must be made within the time fixed by the agreement or, if no time is fixed, within the time that the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the party's objection prior to the delivery of the award to that party.

History: En. Sec. 11, Ch. 684, L. 1985; amd. Sec. 605, Ch. 56, L. 2009.

27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under conditions that the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice must be given immediately to the opposing party, stating that the opposing party must serve the party's objections to the award, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: En. Sec. 12, Ch. 684, L. 1985; amd. Sec. 606, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 9, Uniform Arbitration Act, 7 U.L.A. 128.

27-5-218. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: En. Sec. 13, Ch. 684, L. 1985.

Compiler's Comments

Source: Section 10, Uniform Arbitration Act, 7 U.L.A. 131.

Cross-References

Cost of arbitration between firefighters' organization and public employer, 39-34-106.

Case Notes

Equitable Power of Arbitrator to Award Attorney Fees When Bad Faith or Malicious Behavior Involved: The traditional rule is that an arbitrator should not award attorney fees without a statutory or contractual basis; however, an arbitrator may, under limited circumstances, award attorney fees through the arbitrator's equity powers when bad faith or malicious behavior is involved. Here, the arbitrator noted that defendant Kuehl exhibited malicious and reprehensible behavior after the parties had executed a settlement agreement by turning a dispute over 900 square feet of ground, in a beet field that never belonged to him and that was worth not even \$2,000, into litigation that cost the parties tens of thousands of dollars. The award of attorney fees against Kuehl was properly within the arbitrator's equitable powers, and the District Court did not abuse its discretion in confirming the award. Langemeier v. Kuehl, 2001 MT 306, 307 M 499, 40 P3d 343 (2001). See also Nelson v. Livingston Rebuild Center, Inc., 1999 MT 116, 294 M 408, 981 P2d 1185 (1999), and Terra W. Townhomes, L.L.C. v. Stu Henkle Realty, 2000 MT 43, 298 M 344, 996 P2d 866 (2000).

Part 3

Procedure Following Award

27-5-301. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

27-5-303. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

27-5-312. Vacating an award.

- (1) Upon the application of a party, the district court shall vacate an award if:
 - (a) the award was procured by corruption, fraud, or other undue means;
 - (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (c) the arbitrators exceeded their powers;
 - (d) the arbitrators refused to postpone the hearing upon sufficient cause being shown or refused to hear evidence material to the controversy or otherwise conducted the hearing, contrary to the provisions of 27-5-213, in a manner that substantially prejudiced the rights of a party;
 - (e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection; or
 - (f) a neutral arbitrator failed to make a material disclosure required by 27-5-116. An award may be vacated because of a material noncompliance with 27-5-116 no later than 90 days following discovery of the failure to disclose.
- (2) The fact that the relief could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.
- (3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after the grounds are known or should have been known.
- (4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.
- (5) If the application to vacate is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985; amd. Sec. 3, Ch. 339, L. 2009.

27-5-313. Modification or correction of award by court.

- (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:
 - (a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
 - (b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
 - (c) the award is imperfect in a matter of form not affecting the merits of the controversy.
- (2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.
- (3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs.

- (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.
- (2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

Compiler's Comments

Source: Section 16, Uniform Arbitration Act, 7 U.L.A. 208.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if the adverse party does not have a residence or place of business in this state, to the court of any county. All

subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. An agreement concerning venue involving a resident of this state is not valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature on the agreement.

History: En. Sec. 20, Ch. 684, L. 1985; amd. Sec. 607, Ch. 56, L. 2009.

27-5-324. Appeals.

- (1) An appeal may be taken from:
 - (a) an order denying an application to compel arbitration made under 27-5-115;
 - (b) an order granting an application to stay arbitration made under 27-5-115(2);
 - (c) an order confirming or denying confirmation of an award;
 - (d) an order modifying or correcting an award;
 - (e) an order vacating an award without directing a rehearing; or
 - (f) a judgment entered pursuant to the provisions of this chapter.
- (2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

History: En. Sec. 21, Ch. 684, L. 1985.

TITLE 49 HUMAN RIGHTS

CHAPTER 3 GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 General Provisions

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 407, L. 1993, provided: "WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability".

Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Variation of oath to suit witness's belief, 1-6-103.

Marital status irrelevant to parent-child relationship, 40-6-103.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

- (1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.
- (2) "Commission" means the commission for human rights provided for in 2-15-1706.
- (3) (a) "Physical or mental disability" means:
 - (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
 - (ii) a record of such an impairment; or
 - (iii) a condition regarded as such an impairment.
- (b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.
- (4) "State or local governmental agency" means:
 - (a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or
 - (b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.
- (5) "Qualifications" means qualifications that are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991; amd. Sec. 11, Ch. 407, L. 1993.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References

Applicability to community college districts, 20-15-403.

49-3-103. Permitted distinctions.

- (1) Nothing in this chapter prohibits any public employer:
 - (a) from enforcing a differentiation based on marital status, age, or physical or mental disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;
 - (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;
 - (c) from discharging or otherwise disciplining an individual for good cause; or

- (d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.
- (2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991; amd. Sec. 6, Ch. 13, L. 1993; amd. Sec. 12, Ch. 407, L. 1993.

Attorney General's Opinions

Impliedly Repealed Nepotism Statute Not Revived by 1983 Amendments: The Attorney General issued an opinion (39 A.G. Op. 67 (1982)) that 2-2-302 had been impliedly repealed by the Human Rights Act. The 1983 amendments to the Human Rights Act and the Governmental Code of Fair Practices (which amendments permit assertion of the "reasonable demands" or "bona fide occupational qualification" defense to marital status discrimination) did not revive the impliedly repealed portion of 2-2-302 restricting employment on the basis of affinity. 40 A.G. Op. 40 (1984).

Nepotism Statute Subservient to Human Rights Law: The nepotism law clearly violates the intent of the human rights law because it permits discrimination in employment based solely on marital status. Applying the rule of construction that when two laws are in conflict, the later one supersedes the earlier, the human rights law must prevail. Thus, the Human Rights Act prohibits the Board of Trustees of a school district from enforcing the nepotism statute by refusing employment to a teacher solely on the basis of her relationship by affinity to a Board member. 39 A.G. Op. 67 (1982), overruled by 1985 amendment of this section, as declared by 41 A.G. Op. 57 (1986) (see also 1987 amendment to 2-2-302).

- 49-3-104. Quotas not required.** Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. Sec. 4, Ch. 540, L. 1983.

- 49-3-106. Rulemaking authority.** The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

- (1) filing of complaints;
- (2) conducting investigations of complaints;
- (3) petitioning for a declaratory ruling; and
- (4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

Title 24, chapter 9, subchapter 1, ARM Organizational rules.

Title 24, chapter 9, subchapter 6, ARM Proof of unlawful discrimination.
Title 24, chapter 9, subchapter 10, ARM Sex discrimination in education.
Title 24, chapter 9, subchapter 14, ARM Guidelines for employment.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.

- (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- (2) All state and local governmental agencies shall:
 - (a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;
 - (b) regularly review their personnel practices to ensure compliance; and
 - (c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.
- (3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.
- (4) Appointing authorities shall exercise care to ensure utilization of minority group persons.
- (5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.
- (6) For the purposes of this section, employment does not refer to or include services provided by an individual working under an independent contractor exemption certificate issued under 39-71-417.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993; amd. Sec. 2, Ch. 201, L. 2011.

Case Notes

*Employment Discrimination Based on Political Beliefs: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) did not hire plaintiff because of her support for certain legislation pending before the Legislature. The Supreme Court cited *Pickering v. Bd. of Educ.*, 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731 (1968), in holding that a public employee does not relinquish his first amendment right to comment on matters of public interest by virtue of government employment. Plaintiff's support of proposed legislation was a matter of public concern as to how government should be conducted and thus was an expression of her political ideas or beliefs. Failure to hire her because of those ideas or beliefs constituted illegal discrimination. *Taliaferro v. Dept. of Social and Rehabilitation Services*, 235 M 23, 764 P2d 860, 45 St. Rep. 2131 (1988).*

*"Marital Status" Condition of Employment — Antinepotism Policy Discriminatory: Plaintiffs were employed as administrators in the Harlem schools. Their wives were teachers in the Harlem schools. After the school board adopted a policy that administrators could not have a spouse employed in any capacity in the Harlem school system, the board terminated one plaintiff and reduced the other to a teaching position. The board's policy was discriminatory, as the term "marital status" includes the identity and occupation of one spouse as well as whether one is married, single, widowed, or divorced. *Thompson v. School District*, 192 M 266, 627 P2d 1229, 38 St. Rep. 706 (1981).*

Law Review Articles

Employment At-Will, Wrongful Discharge, and the Covenant of Good Faith and Fair Dealing in Montana, Past, Present, and Future, Hopkins & Robinson, 46 Mont. L. Rev. 1 (1985).

49-3-202. Employment referrals and placement services.

- (1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin must be rejected.
- (2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.
- (3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320; amd. Sec. 14, Ch. 407, L. 1993.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979; amd. Sec. 15, Ch. 407, L. 1993.

49-3-204. Licensing.

- (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.
- (2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas,

sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991; amd. Sec. 16, Ch. 407, L. 1993; amd. Sec. 235, Ch. 546, L. 1995.

49-3-205. Governmental services.

- (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- (2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.
- (3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.
- (4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991; amd. Sec. 17, Ch. 407, L. 1993.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324; amd. Sec. 18, Ch. 407, L. 1993.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979; amd. Sec. 19, Ch. 407, L. 1993.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983; amd. Sec. 1802, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 3 Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 5, Ch. 540, L. 1983; amd. Sec. 2, Ch. 415, L. 1987.

49-3-305. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 7, Ch. 540, L. 1983; amd. Sec. 8, Ch. 801, L. 1991.

49-3-307. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 9, Ch. 540, L. 1983.

49-3-309. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 10, Ch. 540, L. 1983.

49-3-310. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 11, Ch. 540, L. 1983.

49-3-311. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.

49-3-312. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 13, Ch. 540, L. 1983; amd. Sec. 2, Ch. 511, L. 1987.

49-3-313 and 49-3-314 reserved.**49-3-315. Enforcement and remedies.** The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

History: En. Sec. 16, Ch. 467, L. 1997.

TITLE 75 ENVIRONMENTAL PROTECTION

CHAPTER 6 PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 3 Regional Water and Wastewater Authority Act

75-6-301. Short title. This part may be cited as the “Regional Water and Wastewater Authority Act”.

History: En. Sec. 1, Ch. 498, L. 1999.

75-6-302. Purpose.

- (1) It is the purpose of this part to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of this part to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority.
- (2) In addition to the purposes for which it may have originally been created, any authority created pursuant to this part may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of related services, including but not limited to the following:
 - (a) administration;
 - (b) operation and maintenance; and
 - (c) billing and collection.

History: En. Sec. 2, Ch. 498, L. 1999.

75-6-303. Liberal construction. The provisions of this part are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of this part.

History: En. Sec. 20, Ch. 498, L. 1999.

75-6-304. Definitions. For the purposes of this part, the following definitions apply:

- (1) “Authority” means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part.

- (2) "District customer" means a county water and/or sewer district that is afforded the use or the availability of service from an authority.
- (3) "Municipal customer" means a municipality that is afforded the use or the availability of service from an authority.
- (4) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.
- (5) "Rural customer" means a customer who is afforded the use or the availability of service from an authority and is neither a district customer nor a municipal customer.

History: En. Sec. 3, Ch. 498, L. 1999; amd. Sec. 5, Ch. 187, L. 2013.

75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds — consent of public agency.

- (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.
- (2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.
- (3) An agreement must specify the following:
 - (a) its duration;
 - (b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;
 - (c) its purpose or purposes;
 - (d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;
 - (e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;
 - (f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and
 - (g) any other necessary and proper matters.
- (4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.
- (5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.
- (6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

- (7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.
- (8) (a) An authority may not provide water or wastewater services to end users located within the jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the adoption of a resolution or ordinance.
- (b) The governing body may not adopt a resolution or ordinance without first holding a public hearing. The hearing must address relevant factors relating to the provision of the water or wastewater services, including but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency and the authority, and the rights and obligations of the persons or entities to be served. Notice must be given as provided in 7-1-2121 or 7-1-4127.
- (c) For purposes of this subsection (8), "governing body" means the council, commission, board of directors, or other legislative body charged with governing the public agency.

History: En. Sec. 4, Ch. 498, L. 1999; amd. Sec. 5, Ch. 13, L. 2011.

75-6-306. Furnishing of funds, personnel, or services by certain public agencies — agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater — terms and conditions. A public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned water distribution company may enter into contracts with an authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to this part, for the transportation and treatment of wastewater by either party. The authority may enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of a water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

History: En. Sec. 5, Ch. 498, L. 1999.

75-6-307 through 75-6-309 reserved.

75-6-310. Declaration of authority organization — when public body, corporate and politic. Upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number, regional wastewater authority number, or regional water and wastewater authority number, as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

History: En. Sec. 6, Ch. 498, L. 1999.

75-6-311. Governing body — appointments — terms of members — voting rights.

- (1) The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in 75-6-305 and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.
- (2) The manner of selection of the governing body and terms of office must be set forth in the agreement provided for in 75-6-305 and amendments to the agreement. The governing body of the authority shall elect one of its members as president, one as treasurer, and one as secretary.
- (3) Each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.

History: En. Sec. 7, Ch. 498, L. 1999.

75-6-312. Meetings of governing body — annual audit. The governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.

History: En. Sec. 8, Ch. 498, L. 1999.

75-6-313. Powers of governing body.

- (1) For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section.
- (2) The governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation, from this state or any other state or any political subdivision or municipality of this or any other state, or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The govern-

ing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant.

- (3) The governing body may sue and be sued.
- (4) The governing body may enter into franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state or the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agencies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be applicable to any member public agency.
- (5) The governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in this part and may refund the indebtedness by the issuance of refunding obligations.
- (6) The governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30.
- (7) The governing body may acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization.
- (8) The governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish regulations relating to authority improvements.
- (9) The governing body may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must be paid out of the funds of the authority.
- (10) The governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing body and of the authority.

- (11) The governing body has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this part.

History: En. Sec. 9, Ch. 498, L. 1999.

75-6-314 through 75-6-319 reserved.

75-6-320. Revenue bonds. For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purposes, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue bonds are a lien on the revenue produced from the operation of the authority's system, but may not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this part must be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority. The bonds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiable and payable solely from the revenue derived from the operation of the system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created by this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form, may carry registration privileges, may be executed in the manner, may be payable at a place or places, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date, may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance

of the bonds may contain covenants and restrictions upon the issuance of additional bonds that are considered necessary or advisable for the assurance of the payment of the bonds authorized by the resolutions.

History: En. Sec. 10, Ch. 498, L. 1999.

75-6-321. Items included in cost of properties. The cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of this part must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in this part, the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

History: En. Sec. 11, Ch. 498, L. 1999.

75-6-322. Trust indenture. In the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank that has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member public agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, operation, repair, maintenance, and insurance of the bonds and the custody, safeguarding, and application of all money. The resolution may also provide that all or any part of the construction work must be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to the purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

History: En. Sec. 12, Ch. 498, L. 1999.

75-6-323. Sinking fund for revenue bonds. At or before the time of the issuance of any bonds under this part, the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums that are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for the retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.

History: En. Sec. 13, Ch. 498, L. 1999.

75-6-324. Collection of revenue and enforcement of covenants — default — suit to compel performance — appointment and powers of receiver. The governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of the authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in 75-6-323 or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agents, or employees fail or refuse to comply with the provisions of this part or default in any covenant or agreement made with respect to the issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the district court in any of the counties in which the authority operates or in any other court of competent jurisdiction to enforce and compel performance of all duties required by this part or undertaken by the authority in connection with the issuance of the bonds. Upon application by any holder or holders of the bonds or the trustee of the trust indenture, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

History: En. Sec. 14, Ch. 498, L. 1999.

75-6-325. Statutory mortgage lien. There is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to be issued pursuant to this part, and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

History: En. Sec. 15, Ch. 498, L. 1999.

75-6-326. Rates, fees, and charges — establishment and changes.

- (1) (a) The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges, for the use of all services rendered by the authority.
- (b) The governing body of the authority shall review at least annually the rates, fees, and charges for services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received.
- (c) The rates, fees, and charges, in addition to grants or any other revenue, must be sufficient to:
 - (i) pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system;
 - (ii) provide an adequate depreciation fund;
 - (iii) provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due;
 - (iv) create reasonable reserves for the enumerated purposes; and
 - (v) allow for miscellaneous and emergency or unforeseen expenses.
- (2) The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.
- (3) Except as provided in subsection (9), prior to adopting a resolution to establish or change rates, fees, or charges, the governing body of the authority shall hold a public hearing.
- (4) Notice of the public hearing must be published as provided in 7-1-2121 in each county or counties in which customers of the authority are located. The published notice must contain:
 - (a) the date, time, and place of the hearing;
 - (b) a brief statement of the proposed action; and
 - (c) the address and telephone number of a person at the authority who may be contacted for information regarding the hearing.
- (5) (a) The notice must be mailed to each rural customer and to the governing bodies of district customers or municipal customers at least 25 days and not more than 40 days prior to the public hearing.
- (b) The mailed notice must contain an estimate of the amount that a customer would be charged under the proposed resolution.
- (6) If the establishment or change in rates, fees, or charges proposed by the authority requires an increase in the rates, fees, or charges imposed by district customers or municipal customers, district customers and municipal customers shall comply with the provisions of 7-13-2275 or 69-7-111.
- (7) Any interested person, corporation, governmental body, or company may be present, be represented by counsel, and testify at the public hearing of the authority.

- (8) (a) The hearing may be continued by the governing body of the authority as necessary. After the public hearing, the governing body of the authority may, by resolution, impose, establish, change, or increase rates, fees, or charges.
- (b) Within 10 days after adoption of a resolution establishing or changing rates, fees, or charges of the authority, an officer of the authority shall send a copy of the resolution to each governing body of an affected district or municipal customer.
- (9) The authority is not required to hold a public hearing for a cumulative rate increase of less than or equal to 5% within a 12-month period if the governing body of the authority provides notification of the increase to rural customers and to the governing bodies of district customers and municipal customers on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

History: En. Sec. 16, Ch. 498, L. 1999; amd. Sec. 6, Ch. 187, L. 2013.

75-6-327. Refunding revenue bonds. If the authority has issued bonds under the provisions of this part, it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of this part relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.

History: En. Sec. 17, Ch. 498, L. 1999.

75-6-328. Exemption from taxation. Bonds issued pursuant to this part and the interest on the bonds, together with all properties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the money, revenue, and other income of the authority derived from the water supply, wastewater transportation, or treatment system are exempt from all taxation by the state or any county, municipality, political subdivision, or agency of the state, county, or municipality.

History: En. Sec. 18, Ch. 498, L. 1999.

75-6-329. Bonds as legal investment. Bonds issued under the provisions of this part are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

History: En. Sec. 19, Ch. 498, L. 1999.

TITLE 75 ENVIRONMENTAL PROTECTION

CHAPTER 7 AQUATIC ECOSYSTEM PROTECTIONS

Part 1 Streambeds

Chapter Cross-References

Wetlands Protection Advisory Council, 2-15-3405.

Smith River Management Act, Title 23, ch. 2, part 4.

Part Compiler's Comments

Section Not Codified: Section 26-1520, R.C.M. 1947, pertaining to rules and minimum standards promulgated by the Department of Natural Resources and Conservation, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 11, Ch. 463, L. 1975.

Part Cross-References

Ferrykeepers to keep banks of streams at landings in good repair, 7-14-2826.

Fish and Wildlife Commission to adopt rules for protection of streams from adverse recreational use, 23-2-302.

Construction of pipelines across streams, 69-13-103.

Watercourses — accretion and reclamation of banks, Title 70, ch. 18, part 2.

Failure to issue mining permit — protection of streambeds, Title 82, ch. 4, part 2.

Metal mine reclamation, Title 82, ch. 4, part 3.

Water conservancy districts — flow regulation, 85-9-102.

Fishing access sites and frontages — funds for recreational use, 87-1-605.

Stream protection of fish and wildlife resources — plans for construction or hydraulic projects, Title 87, ch. 5, part 5.

Part Administrative Rules

Title 36, chapter 2, subchapter 4, ARM Minimum standards and guidelines for Natural Streambed and Land Preservation Act of 1975.

Part Case Notes

Channel Adjacent to Yellowstone River Subject to Act: The Park Conservation District correctly determined that a channel adjacent to the Yellowstone River is subject to the Natural Streambed and Land Preservation Act. The conservation district's decision was not arbitrary or capricious when the actual physical characteristics of the channel clearly showed that it was a natural channel. Livingston v. Park Conserv. Dist., 2013 MT 234, 371 Mont. 303, 307 P.3d 317.

Conservation District Afforded Public Fundamentally Fair Participation in Process: Though exempt from the dictates of the Montana Administrative Procedure Act as a political subdivision of the state, the conservation district followed its own rules, provided notice, and allowed an extended opportunity for the submission of oral and written information in deciding Mitchell Slough's status under The Natural Streambed and Land Preservation Act of 1975, also known as the "310 Law", Title 75, chapter 7, part 1. Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

Part Attorney General's Opinions

Diversion Dike Construction — Permit or Plan Required: The construction of a diversion dike with heavy equipment requires either a "310 permit" or an approved operation plan under this part.

When this work is performed within a designated flood plain or floodway, the construction additionally requires a permit from the responsible political subdivision. 42 A.G. Op. 106 (1988).

Permit Necessary Before Altering Stream Channel — Irrigation: In accordance with *The Natural Streambed and Land Preservation Act* of 1975, an irrigator must apply to the supervisors of a local conservation district for a “310 permit” before altering a stream channel to divert water. All alterations, however slight, are subject to the permit process. 41 A.G. Op. 62 (1986).

Application of Part: Title 87, ch. 5, part 5, was enacted to regulate projects undertaken by governmental entities, and the *Natural Streambed and Land Preservation Act* of 1975 was enacted to control projects not subject to Title 87, ch. 5, part 5. 40 A.G. Op. 71 (1984).

Applicability of Natural Streambed and Land Preservation Act: The *Montana Natural Streambed and Land Preservation Act* is not applicable to federal projects, wherever located, unless Congress consents to regulation. The Act is applicable to nonfederal projects on federal lands unless a specific act of Congress preempts state regulation or unless the Act conflicts with applicable state regulation. The Act is applicable to private projects, but not state or local projects, on state lands. The Act is not applicable to Indian projects on Indian reservations but is applicable to non-Indian projects on non-Indian owned reservation lands if the Act does not conflict with tribal self-government. 37 A.G. Op. 15 (1977).

Part Law Review Articles

Survey Analysis of Natural Streambed and Land Preservation Act of 1975, Goetz, 38 *Mont. L. Rev.* 165 (Vol. 1, 1977).

Preserving Stream Flows in Montana Through the Constitutional Public Trust Doctrine: An Underrated Solution, Clifford, 16 *Pub. Land L. Rev.* 117 (1995).

Instream Flow Policy in Montana: A History and Blueprint for the Future, McKinney, 11 *Pub. Land L. Rev.* 81 (1990).

75-7-101. Short title. This part may be cited as “The Natural Streambed and Land Preservation Act of 1975”.

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Intent — policy.

- (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. It is the legislature’s intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.
- (2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511; *amd.* Sec. 11, Ch. 361, L. 2003.

Case Notes

District Court Erred in Affirming Conservation District’s Determination Regarding Mitchell Slough: The District Court’s narrow, technical definition of “natural” as meaning “in the absence of any

man-made manipulation” and resulting conclusions led to errors of law. The totality of the circumstances of the factual record should have been considered in determining whether the Mitchell Slough is a “natural, perennial-flowing stream or river” for the purpose of Title 75, chapter 7, part 1. *Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist.*, 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

District Court in Error When Concluding That Mitchell Slough Was Not Natural Water Body: The District Court’s use of the dictionary definition of “natural” as pristine and unaffected by humans in relation to the stream access laws under Title 23, chapter 2, part 3, leads to an absurd result that prohibits the very public recreational access it was designed to allow. The proper conclusion is that the return flows that find their way to and join the flow in the Mitchell Slough’s historic channel are to be appropriately analyzed as freed, appropriative waters. Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist., 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

Scope of Writ of Prohibition — Writ Inappropriate to Stop Conservation District From Making Initial Determination of Whether Body of Water Considered Natural Perennial Flowing Stream When Other Remedies Exist: After unsuccessfully attempting to have the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, and the Department of Environmental Quality make the determination as to whether a slough east of Victor was a perennial flowing stream and thus subject to The Natural Streambed and Land Preservation Act of 1975, the county conservation district decided to use a public hearing process to make the determination. Plaintiffs sought a writ of prohibition to stop the conservation district from determining the status of the slough. After the writ was denied in District Court, plaintiffs submitted it to the Supreme Court. A writ of prohibition serves to stop an entity exercising judicial functions from acting when the proceedings are beyond that entity’s jurisdiction and are clearly unlawful, but should not replace an appeal or perform the function of a writ of review. A writ of prohibition is justified only by extreme necessity when the grievance cannot be redressed by ordinary proceedings at law, in equity, or by appeal. The existence of another remedy, even if inconvenient or indirect, prevents a party from seeking a writ of prohibition. In the interest of both judicial economy and agency efficiency, an exhaustion of administrative remedies allows a governmental agency to make a factual record and to correct its own errors within its specific expertise before a court interferes. After noting that the Act does not specifically authorize a conservation district or any other entity with the power to classify bodies of water as streams, the Supreme Court found that the conservation district was simply attempting to apply the Legislature’s articulated requirement of a natural perennial flowing stream and declined to interfere with the conservation district’s ability to initially determine the scope of its jurisdiction and exercise its expertise to decide whether the slough was in fact a stream. Further, once the status of the slough was determined, there was nothing to prevent plaintiffs from seeking judicial review of the conservation district’s declaratory rulings. Because extreme necessity and lack of redress did not exist, a writ of prohibition was inappropriate to stop the conservation district from making the initial ruling on the status of the slough, so the writ was denied. Bitterroot River Protection Ass’n, Inc. v. Bitterroot Conserv. District, 2002 MT 66, 309 M 207, 45 P3d 24 (2002), followed in *Paulson v. Flathead Conserv. District*, 2004 MT 136, 321 M 364, 91 P3d 569 (2004).

Attorney General’s Opinions

Permit Necessary Before Altering Stream Channel — Irrigation: In accordance with The Natural Streambed and Land Preservation Act of 1975, an irrigator must apply to the supervisors of a local conservation district for a “310 permit” before altering a stream channel to divert water. All alterations, however slight, are subject to the permit process. 41 A.G. Op. 62 (1986).

Conservation District Supervisors’ Review of Impact on Land Between Stream Crossings: Conservation district supervisors do not have authority under the Natural Streambed and Land Preservation Act of 1975 (Title 75, ch. 7, part 1) to review the route of a proposed pipeline within the county at places other than stream crossings. This is true even though a lawful review of several stream crossings may amount to a review of the land between the crossings. The Act and the standards adopted by the Board of Natural Resources and Conservation (now Department of Natural Resources and Conserva-

tion) make clear that the review applies only to the stream sites themselves. However, the supervisors may formulate regulations under 76-15-701 to address the issue of land use in their jurisdiction. 39 A.G. Op. 2 (1981).

Scope of Natural Streambed and Land Preservation Act: Under both the Natural Streambed and Land Preservation Act and the regulations implementing the Act, the scope of the projects subject to review and approval by a conservation district has been limited to those actually located at the site of a stream and the immediately adjacent property. 39 A.G. Op. 2 (1981).

75-7-103. Definitions. As used in this part, the following definitions apply:

- (1) "Applicant" means any person presenting notice of a project to the supervisors.
- (2) "Department" means the Montana department of fish, wildlife, and parks.
- (3) "District" means:
 - (a) a conservation district under Title 76, chapter 15, in which the project will take place;
 - (b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or
 - (c) the board of county commissioners in a county where a district does not exist.
- (4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.
- (5) (a) "Project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.
 - (b) Project does not include:
 - (i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
 - (ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102; or
 - (iii) livestock grazing activities.
- (6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.
- (7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.
- (8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.
- (9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 551, L. 1987; amd. Sec. 1, Ch. 426, L. 1995; amd. Sec. 1, Ch. 447, L. 2003.

Cross-References

Composition of Board of County Commissioners, 7-4-2101.
Conservation district supervisors, Title 76, ch. 15.
Grass Conservation Act, Title 76, ch. 16.

Case Notes

Channel Adjacent to Yellowstone River Subject to Act: The Park Conservation District correctly determined that a channel adjacent to the Yellowstone River is subject to the Natural Streambed and Land Preservation Act. The conservation district's decision was not arbitrary or capricious when the actual physical characteristics of the channel clearly showed that it was a natural channel. *Livingston v. Park Conserv. Dist.*, 2013 MT 234, 371 Mont. 303, 307 P.3d 317.

Consideration of Record and of Totality of Circumstances Leads to Reversal of District Court Judgment: The Supreme Court held that the Mitchell Slough is a "natural, perennial-flowing stream or river" and thus is subject to this part. *Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist.*, 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

District Court Erred in Affirming Conservation District's Determination Regarding Mitchell Slough: The District Court's narrow, technical definition of "natural" as meaning "in the absence of any man-made manipulation" and resulting conclusions led to errors of law. The totality of the circumstances of the factual record should have been considered in determining whether the Mitchell Slough is a "natural, perennial-flowing stream or river" for the purpose of Title 75, chapter 7, part 1. *Bitterroot River Protective Assoc., Inc. v. Bitterroot Conserv. Dist.*, 2008 MT 377, 346 M 507, 198 P3d 219 (2008).

Scope of Writ of Prohibition — Writ Inappropriate to Stop Conservation District From Making Initial Determination of Whether Body of Water Considered Natural Perennial Flowing Stream When Other Remedies Exist: After unsuccessfully attempting to have the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, and the Department of Environmental Quality make the determination as to whether a slough east of Victor was a perennial flowing stream and thus subject to The Natural Streambed and Land Preservation Act of 1975, the county conservation district decided to use a public hearing process to make the determination. Plaintiffs sought a writ of prohibition to stop the conservation district from determining the status of the slough. After the writ was denied in District Court, plaintiffs submitted it to the Supreme Court. A writ of prohibition serves to stop an entity exercising judicial functions from acting when the proceedings are beyond that entity's jurisdiction and are clearly unlawful, but should not replace an appeal or perform the function of a writ of review. A writ of prohibition is justified only by extreme necessity when the grievance cannot be redressed by ordinary proceedings at law, in equity, or by appeal. The existence of another remedy, even if inconvenient or indirect, prevents a party from seeking a writ of prohibition. In the interest of both judicial economy and agency efficiency, an exhaustion of administrative remedies allows a governmental agency to make a factual record and to correct its own errors within its specific expertise before a court interferes. After noting that the Act does not specifically authorize a conservation district or any other entity with the power to classify bodies of water as streams (see 75-7-125), the Supreme Court found that the conservation district was simply attempting to apply the Legislature's articulated requirement of a natural perennial flowing stream and declined to interfere with the conservation district's ability to initially determine the scope of its jurisdiction and exercise its expertise to decide whether the slough was in fact a stream. Further, once the status of the slough was determined, there was nothing to prevent plaintiffs from seeking judicial review of the conservation district's declaratory rulings. Because extreme necessity and lack of redress did not exist, a writ of prohibition was inappropriate to stop the conservation district from making the initial ruling on the status of the slough, so the writ was denied. *Bitterroot River Protection Ass'n, Inc. v. Bitterroot Conserv. District*, 2002 MT 66, 309 M 207, 45 P3d 24 (2002), followed in *Paulson v. Flathead Conserv. District*, 2004 MT 136, 321 M 364, 91 P3d 569 (2004).

Attorney General's Opinions

Diversion Dike Construction — Permit or Plan Required: The construction of a diversion dike with heavy equipment requires either a "310 permit" or an approved operation plan under Title 75,

ch. 7, part 1. When this work is performed within a designated flood plain or floodway, the construction additionally requires a permit from the responsible political subdivision. 42 A.G. Op. 106 (1988).

Irrigation District as Person: An irrigation district is a "person" within the meaning of subsection (4) of this section. 42 A.G. Op. 33 (1987).

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

75-7-105. Application of flood plain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated flood plains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty.

- (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.
- (2) A person who violates subsection (1) is subject to penalties as provided in 75-7-123.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part); amd. Sec. 2, Ch. 426, L. 1995.

Cross-References

Ordinary high-water mark defined, 23-2-301.

Venue for action arising on stream, 25-2-124.

Execution of criminal fine, 46-19-102.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project.

- (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.
- (2) The notice must include the location, general description, and preliminary plan of the project.
- (3) At the time of filing a notice of the proposed project under subsection (1), the applicant may sign an arbitration agreement as provided in 75-7-117.
- (4) The district may authorize a representative to accept notices of proposed projects.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513; amd. Sec. 3, Ch. 426, L. 1995; amd. Sec. 1, Ch. 581, L. 2003.

Cross-References

Removal of obstructions caused by beaver and beaver dams, 87-1-224.

Attorney General's Opinions

Permit Necessary Before Altering Stream Channel — Irrigation: In accordance with The Natural Streambed and Land Preservation Act of 1975, an irrigator must apply to the supervisors of a local conservation district for a "310 permit" before altering a stream channel to divert water. All alterations, however slight, are subject to the permit process. 41 A.G. Op. 62 (1986).

75-7-112. Procedure for considering projects — team.

- (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.
- (2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.
- (3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.
- (4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.
- (5) (a) When a member of the team, other than an applicant, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.
- (b) When an applicant disagrees with the supervisors' decision, the applicant shall, within 30 working days of receipt of the supervisors' decision:
 - (i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or
 - (ii) appeal the decision of the supervisors to the district court for the county where the project is located.
- (6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 30 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of a 15-day waiting period unless written permission is given by all team members and the district.
- (7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

- (8) Work on a project under this part may not take place without the written consent of the supervisors.
- (9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:
 - (a) the purpose of the project; and
 - (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:
 - (i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;
 - (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;
 - (iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;
 - (iv) the effects on stream channel alteration;
 - (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and
 - (vi) the effect on fish and aquatic habitat.
- (10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.
- (11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514; amd. Sec. 4, Ch. 426, L. 1995; amd. Sec. 2, Ch. 581, L. 2003; amd. Sec. 1, Ch. 124, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 124 in (5)(a) after "other than an applicant" deleted "that has not agreed to arbitration"; in (5)(b) after "When an applicant" deleted "that has not agreed to arbitration under 75-7-111" and near middle substituted "30 working days" for "15 working days"; in (6) after "in writing within" substituted "30 days" for "15 days"; and made minor changes in style. Amendment effective October 1, 2019.

2003 Amendment: Chapter 581 in (5)(a) near beginning after "team" inserted "other than an applicant that has not agreed to arbitration"; inserted (5)(b) concerning applicant who has not agreed to arbitration and who disagrees with supervisors' decision; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 426 substituted (1) regarding proposed project notification procedure for former language that read: "(1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project"; in (1), (2), and (5) substituted "within 5 working days" for "within 5 days"; in (1) substituted "receipt of the notification, inform the supervisors" for "receipt of the determination, notify the supervisors"; in last sentence in (2), after "deny", substituted "approve or modify" for "or approve the project or may make recommendations for alternative plans"; in (3) substituted "within 30 days of the date of inspection" for "within 50 days of

the date of application”; in (6) substituted “Upon written consent of the supervisors, the applicant shall notify” for “Upon written notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify” and after “accordance” substituted “with the supervisor’s decision” and last sentence prohibiting work on project before end of 15-day waiting period without team and district permission for former language that read: “with the recommendations or alternative plans. No work may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision”; inserted (9) outlining criteria that team and supervisors are required to determine in recommending, denying, approving, or modifying project; inserted (10) concerning modification; inserted (11) concerning reasonable means; adjusted subsection references; and made minor changes in style.

75-7-113. Emergencies — procedure.

- (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.
- (2) The emergency notice given under subsection (1) must contain the following information:
 - (a) the location of the action taken;
 - (b) a general description of the action taken;
 - (c) the date on which the action was taken; and
 - (d) an explanation of the emergency causing the need for the action taken.
- (3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.
- (4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.
- (5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.
- (6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.
- (7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors’ decision.
- (8)
 - (a) When a member of the team, other than an applicant, disagrees with the supervisors’ decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.
 - (b) When an applicant disagrees with the supervisors’ decision, the applicant shall, within 30 working days of receipt of the supervisors’ decision:
 - (i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or
 - (ii) appeal the decision of the supervisors to the district court for the county where the project is located.

- (9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:
- (a) failure to provide emergency notice under subsection (1);
 - (b) failure to submit a notice of the project under subsection (7); or
 - (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517; amd. Sec. 5, Ch. 426, L. 1995; amd. Sec. 3, Ch. 581, L. 2003; amd. Sec. 2, Ch. 124, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 124 in (8)(a) after "other than an applicant" deleted "that has not agreed to arbitration"; in (8)(b) after "When an applicant" deleted "that has not agreed to arbitration under 75-7-111" and near end substituted "30 working days" for "15 working days". Amendment effective October 1, 2019.

2003 Amendment: Chapter 581 in (8)(a) near beginning after "team" inserted "other than an applicant that has not agreed to arbitration"; inserted (8)(b) concerning applicant who has not agreed to arbitration and who disagrees with supervisors' decision; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 426 in second sentence in (1) substituted "taking action" for "project"; inserted (2) outlining information required in emergency notice; in beginning of (3) inserted "If the supervisors determine that the action taken meets the definition of a project" and after "5" inserted "working"; in (4) substituted "75-7-112(2)" for "75-7-112(3)" and substituted requirement that team make "onsite inspection within 20 days of receipt of the emergency notice" for "onsite inspection and individual written reports to the supervisors within 30 days, giving its observations and opinions on the emergency project"; substituted (5) through (9) regarding emergency notice, review of emergency project and action, and penalty for former (4) through (6) that read: "(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within 30 days, recommend that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this part unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon"; and made minor changes in style.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1); amd. Sec. 6, Ch. 426, L. 1995.

Case Notes

No Abuse of Discretion in Refusing to Vacate Arbitration Award Based on Allegations of Arbitrator Partiality Absent Showing of Evident Partiality: Plaintiffs contended that an arbitration award should be vacated because one of the arbitrators, a former employee of one of the agencies involved in the arbitration, was not neutral. The motion to vacate was denied, and on appeal, the Supreme Court affirmed. Employment status is insufficient, of itself, to establish partiality, and plaintiffs' argument amounted to a speculative and conclusory allegation of partiality, rather than the direct and demonstrable evidence of partiality required to vacate an award. Paulson v. Flathead Conserv. District, 2004 MT 136, 321 M 364, 91 P3d 569 (2004).

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-116. Modification of plan — assignment of costs.

- (1) If the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.
- (2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518; amd. Sec. 4, Ch. 581, L. 2003.

75-7-117. Rules — minimum standards — arbitration agreement.

- (1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.
- (2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).
- (3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an applicant chooses to use arbitration. The arbitration agreement must contain provisions for:
 - (a) the appointment of arbitrators;
 - (b) the exercise of power by the arbitrators;

- (c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and
- (d) the fees and expenses of arbitration.

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975; R.C.M. 1947, 26-1520; amd. Sec. 2, Ch. 551, L. 1987; amd. Sec. 189, Ch. 418, L. 1995; amd. Sec. 7, Ch. 426, L. 1995; amd. Sec. 5, Ch. 581, L. 2003.

75-7-118 through 75-7-120 reserved.

75-7-121. Review.

- (1) Any review of final action by the supervisors under 75-7-112 or 75-7-113 may be by arbitration or by the district court of the county where the project is located. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur.
- (2) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521; amd. Sec. 8, Ch. 426, L. 1995; amd. Sec. 12, Ch. 361, L. 2003; amd. Sec. 6, Ch. 581, L. 2003.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
District Courts, Title 3, ch. 5.
Venue for action arising on stream, 25-2-124.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522; amd. Sec. 9, Ch. 426, L. 1995.

Cross-References

Obstruction of rivers and streams as nuisance, 27-30-101.
Action to abate public nuisance, 27-30-202.
Criminal code — public nuisance, 45-8-111.

75-7-123. Penalties — restoration.

- (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:
 - (a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or
 - (b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.
- (2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district

may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

- (3) In addition to a fine or a civil penalty under subsection (1), the person:
 - (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or
 - (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed \$12,000. If the amount of liability for restoration exceeds \$12,000, then the action must be brought in district court.
- (4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1); amd. Sec. 1, Ch. 255, L. 1993; amd. Sec. 10, Ch. 426, L. 1995; amd. Sec. 3, Ch. 470, L. 2003; amd. Sec. 8, Ch. 284, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 284 in (3)(b) in two places increased jurisdictional limits from \$7,000 to \$12,000. Amendment effective July 1, 2011.

2003 Amendment: Chapter 470 at end of (1)(b) substituted "be in violation" for "physically alter or modify the stream"; inserted (2) providing that each day constitutes separate violation and requiring district to work with violator to resolve amount of penalty prior to initiating enforcement action; inserted (3)(b) providing for civil liability for amount necessary to restore stream; inserted (4) providing for deposit of money; and made minor changes in style. Amendment effective April 23, 2003.

Retroactive Applicability: Section 6, Ch. 470, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all notices of projects pending before a conservation district on [the effective date of this act]." Approved April 23, 2003.

1995 Amendment: Chapter 426 near beginning, after "supervisors", inserted "performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106", substituted "fine not to exceed \$500 or by a civil penalty not to exceed \$500 for each day" for "fine of not less than \$25 or more than \$500 or by a civil penalty of not less than \$25 or more than \$500 for each day", and near end, after "recommended by the", deleted "team and approved by the"; and made minor changes in style. Amendment effective April 13, 1995.

1993 Amendment: Chapter 255 near middle inserted "or by a civil penalty of not less than \$25 or more than \$500".

Cross-References

Venue for action arising on stream, 25-2-124.

Execution of criminal fine, 46-19-102.

Restoration of damaged streams, 87-5-509.

75-7-124. Repealed. Sec. 4, Ch. 470, L. 2003.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

75-7-125. Jurisdiction — declaratory ruling — standards — judicial review.

- (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.
(b) The supervisors' determination pursuant to subsection (1)(a) must be made, in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).
- (2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.
(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.
- (3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.
- (4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:
 - (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the supervisors;
 - (c) affected by error of law; or
 - (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.
- (5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.
- (6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

History: En. Sec. 1, Ch. 288, L. 2003.

TITLE 76 LAND RESOURCES AND USE

CHAPTER 1 PLANNING BOARDS

Part 2 Membership

76-1-201. Membership of city-county planning board.

- (1) Except as provided in subsection (2), a city-county planning board consists of no fewer than nine members to be appointed as follows:
 - (a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;
 - (b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;
 - (c) two citizen members who reside within the city limits to be appointed by the mayor of the city;
 - (d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;
 - (e) the ninth member to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).
- (2) Subsection (1)(e) does not apply if there is no member or associate member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In that case, the ninth member of the city-county planning board must be selected by the eight officers and citizen members pursuant to subsections (1)(a) through (1)(d), with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985; amd. Sec. 1, Ch. 151, L. 2007.

76-1-202. Qualifications of citizen members of city-county planning board.

- (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.
- (2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards.

- (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.
- (2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.
- (3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.
- (4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board.

- (1) County planning boards consist of not less than five members appointed by the board of county commissioners. At least one member of a county planning board existing on or formed after July 1, 1973, must be a member of the governing board of a conservation district as provided for in chapter 15, an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district if officers of either of the districts or the designated associate member of a conservation district reside in the county.
- (2) If a city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing the cities or towns must be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2); amd. Sec. 2, Ch. 151, L. 2007.

Attorney General's Opinions

County Planning Board Not to Serve as County Zoning Commission: Because of differences in membership requirements and jurisdictional areas, a County Planning Board may not be designated to serve as the County Zoning Commission. However, members of one board may serve as members of the other if they meet the requirements for membership of each board. 43 A.G. Op. 18 (1989).

76-1-212. Citizen members of county planning board.

- (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.
- (2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.**76-1-221. Membership of city planning board.**

- (1) A city planning board shall consist of not less than seven members to be appointed as follows:
 - (a) one member to be appointed by the city council from its membership;
 - (b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;
 - (c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;
 - (d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.
- (2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board.

- (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member must be coextensive with the term of office to which the member has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless the member's term is terminated as provided in this part.
- (2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806; amd. Sec. 2511, Ch. 56, L. 2009.

76-1-223. County representative for city planning board. When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or

employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979; amd. Sec. 1, Ch. 269, L. 2003.

76-1-224. Citizen members of city planning board.

- (1) The citizen members shall:
 - (a) be qualified by knowledge and experience in matters pertaining to the development of the city; and
 - (b) hold no other office in the city government.
- (2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

CHAPTER 5 FLOOD PLAIN AND FLOODWAY MANAGEMENT

Part 4 Use of Flood Plains and Floodways

76-5-401. Permissible open-space uses. The following open-space uses are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

- (1) agricultural uses;
- (2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;
- (3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;
- (4) forestry, including processing of forest products with portable equipment;
- (5) residential uses such as lawns, gardens, parking areas, and play areas;
- (6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2); amd. Sec. 68, Ch. 7, L. 2001.

76-5-402. Permissible uses within flood plain but outside floodway. Permits must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

- (1) any use permitted in the designated floodway;
- (2) structures, including but not limited to residential, commercial, and industrial struc-

tures, provided that:

- (a) the structures meet the minimum standards adopted by the department;
- (b) residential structures are constructed so that the lowest floor elevation, including basements, is 2 feet above the 100-year flood elevation;
- (c) commercial and industrial structures are either constructed as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3); amd. Sec. 255, Ch. 418, L. 1995; amd. Sec. 2, Ch. 124, L. 2009.

Administrative Rules

ARM 36.15.701 Allowed uses.

ARM 36.15.801 Allowed uses where floodway not designated or no flood elevations.

ARM 36.15.901 through 36.15.903 Flood proofing requirements.

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

- (1) a building for living purposes or place of assembly or permanent use by human beings;
- (2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;
- (3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

Administrative Rules

ARM 36.15.605 Prohibited uses within floodway.

76-5-404. Artificial obstructions and nonconforming uses.

- (1) An artificial obstruction or nonconforming use in a designated flood plain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision.
- (2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway without a permit from the department or the responsible political subdivision.
- (3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated flood plain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the department has enforced a designated flood plain or a designated floodway under 76-5-301(1) and (2).
- (b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway whether the obstruction proposed for alteration was located in the flood

plain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1); amd. Sec. 256, Ch. 418, L. 1995.

Attorney General's Opinions

Diversion Dike Construction — Permit or Plan Required: The construction of a diversion dike with heavy equipment requires either a "310 permit" or an approved operation plan under Title 75, ch. 7, part 1. When this work is performed within a designated floodplain or floodway, the construction additionally requires a permit from the responsible political subdivision. 42 A.G. Op. 106 (1988).

76-5-405. Variance for obstruction or nonconforming use.

- (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.
- (2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.
- (3) The department or the responsible political subdivision may issue the permit with reasonable conditions. The permitted obstruction or use must be maintained in compliance with the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 257, Ch. 418, L. 1995; amd. Sec. 2, Ch. 23, L. 2011.

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department:

- (1) the danger to life and property by water that may be backed up or diverted by the obstruction or use;
- (2) the danger that the obstruction or use will be swept downstream to the injury of others;
- (3) the availability of alternate locations;
- (4) the construction or alteration of the obstruction or use in such a manner as to lessen

- the danger;
- (5) the permanence of the obstruction or use;
- (6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and
- (7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 258, Ch. 418, L. 1995.

CHAPTER 14 RANGELAND RESOURCES

Part 1 Rangeland Management

76-14-101. Short title. This part shall be known as the “Montana Rangeland Resources Act”.

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

- (1) the importance of Montana’s rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;
- (2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and
- (3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

- (1) “Committee” means the Montana rangeland resources committee selected as provided in 2-15-3305(2).
- (2) “Department” means the department of natural resources and conservation.
- (3) “Montana rangeland resource program” means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.
- (4) “Person” means any individual or association, partnership, corporation, or other business entity.
- (5) “Range condition” means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.
- (6) “Range management” means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.
- (7) “Rangeland” means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

- (8) “State coordinator” means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.
- (9) “Tame pastureland” means land that has been modified by mechanical cultivation and that has current vegetation consisting of native or introduced species, or both.
- (10) “Users of rangeland” means all persons, including but not limited to ranchers, farmers, hunters, anglers, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7) En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983; amd. Sec. 66, Ch. 44, L. 2007.

76-14-104. Types of land included as rangeland. The term “rangeland” includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

- (1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;
- (2) strive to create understanding and compatibility between the many users of rangeland, including hunters, anglers, recreationists, ranchers, and others;
- (3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;
- (4) participate in zoning and planning studies to ensure that native ranges are adequately represented at sessions for development of zoning and planning regulations;
- (5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2); amd. Sec. 2524, Ch. 56, L. 2009.

76-14-106. Duties of rangeland resources committee.

- (1) The committee shall:
 - (a) review and recommend annual and long-range work programs;
 - (b) suggest priorities of work;
 - (c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.
- (2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

Collateral References

Rangeland Resource Program, Montana Department of Natural Resources & Conservation, <http://dnrc.mt.gov/divisions/caddl/conservation-districts/rangeland-resource-program>.

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stock water development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

Collateral References

Range Improvement Loan Program, Montana Department of Natural Resources & Conservation, <http://dnrc.mt.gov/divisions/cadd/conervation-districts/range-improvement-loan-program>.

76-14-112. Rangeland improvement loan special revenue account.

- (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.
- (2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the range-land improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 418, L. 1987; amd. Sec. 55, Ch. 16, L. 1991.

76-14-113. Eligibility for loans.

- (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:
 - (a) is a resident of Montana;
 - (b) is engaged in farming or ranching; and
 - (c) possesses the necessary expertise to make a rangeland loan practical.
- (2) All loans must be for rangeland improvement or development exclusively.
- (3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 4, Ch. 171, L. 1983; amd. Sec. 280, Ch. 42, L. 1997.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

- (1) Loan applications must be ranked according to the following priorities:
 - (a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.
 - (b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.
 - (c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

- (d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.
- (e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.
- (2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.
- (3) Consideration must be given to the amount of funding from other sources.
- (4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients.

- (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.
- (2) The department shall organize and review applications for clarity and completeness prior to committee review.
- (3) The committee shall consider applications and make recommendations to the department.
- (4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

- (1) prescribing the form and content of applications for loans and the required conservation plan;
- (2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;
- (3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;
- (4) providing for the confidentiality of financial statements submitted; and
- (5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

CHAPTER 15 CONSERVATION DISTRICTS

Part 1 General Provisions

Chapter Compiler's Comments

Short Title Not Codified: Section 76-101, R.C.M. 1947, a short title for an act, was not codified because of multiple changes in the original act. The section was not repealed and is valid law. Citation may be made to sec. 1, Ch. 72, L. 1939, as amended by sec. 1, Ch. 73, L. 1961.

Implied Repealer Not Codified: Section 76-116, R.C.M. 1947, purporting to repeal all provisions of law inconsistent with this act, was not codified. The section was not repealed and is valid law. Citation may be made to sec. 17, Ch. 72, L. 1939.

Chapter Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

Conservation easements, Title 76, ch. 6, part 2.

Chapter Administrative Rules

Title 36, chapter 6, ARM Soil conservation districts.

Chapter Collateral References

Assuming Dredge-and-Fill Permits: A Water Policy Interim Committee Report to the 65th Legislature, Mont. Leg. Serv. Div. (2016).

Part 1 General Provisions

76-15-101. Legislative determinations. It is declared, as a matter of legislative determination:

- (1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon the occupier's lands causes a washing and blowing of soil and water from the occupier's lands onto other lands and makes the conservation of soil and control of erosion on other lands difficult or impossible;
- (2) that the consequences of soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches, the loss of fertile soil material in dust storms, the piling up of soil on lower slopes and its deposit over alluvial plains, the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills, the deterioration of soil and its fertility, the deterioration of crops and range cover grown on the land, declining acre yields despite development of

scientific processes for increasing yields, the loss of soil and water that causes destruction of food and cover for wildlife, a blowing and washing of soil into streams that silts over spawning beds and destroys water plants, diminishing the food supply of fish, a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures, an increase in the speed and volume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death, the impoverishment of families attempting to operate eroding and eroded lands, damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming, and grazing;

- (3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, and rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C); amd. Sec. 2525, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Extent of Conservation District Implementation of Land Use Regulations Regarding Coal Bed Methane Wastewater Operations: The Legislature did not intend that the listing in 76-15-706 of measures necessary to protect soil and water limit the flexibility of conservation districts to devise means to control the adverse effects of coal bed methane runoff. Thus, a conservation district has authority under 76-15-706, following a referendum by the voters, to implement land use regulations in order to implement reasonable measures to conserve soils, protect soil structure from coal bed methane water, and conserve the water resources of the conservation district. 50 A.G. Op. 9 (2004).

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and

reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.
- (2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (3) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter.
- (4) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area. The posting must include, when possible, posting at public places where it is customary to post notices concerning county or municipal affairs generally.
- (5) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
- (6) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.
- (7) "Petition" means a petition filed under 76-15-201 for the creation of a district.
- (8) "Qualified elector" means an elector as defined in Title 13.
- (9) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.
- (10) "United States" or "agencies of the United States" includes the United States of America, the natural resource conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979; amd. Sec. 269, Ch. 418, L. 1995.

Case Notes

Scope of Writ of Prohibition — Writ Inappropriate to Stop Conservation District From Making Initial Determination of Whether Body of Water Considered Natural Perennial Flowing Stream When Other Remedies Exist: After unsuccessfully attempting to have the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, and the Department of Environmental Quality make the determination as to whether a slough east of Victor was a perennial flowing stream and thus subject to The Natural Streambed and Land Preservation Act of 1975, the county conservation district decided to use a public hearing process to make the determination. Plaintiffs sought a writ of prohibition to stop the conservation district from determining the status of the slough. After the writ was denied in District Court, plaintiffs submitted it to the Supreme Court. A writ of prohibition serves

to stop an entity exercising judicial functions from acting when the proceedings are beyond that entity's jurisdiction and are clearly unlawful, but should not replace an appeal or perform the function of a writ of review. A writ of prohibition is justified only by extreme necessity when the grievance cannot be redressed by ordinary proceedings at law, in equity, or by appeal. The existence of another remedy, even if inconvenient or indirect, prevents a party from seeking a writ of prohibition. In the interest of both judicial economy and agency efficiency, an exhaustion of administrative remedies allows a governmental agency to make a factual record and to correct its own errors within its specific expertise before a court interferes. After noting that the Act does not specifically authorize a conservation district or any other entity with the power to classify bodies of water as streams, the Supreme Court found that the conservation district was simply attempting to apply the Legislature's articulated requirement of a natural perennial flowing stream and declined to interfere with the conservation district's ability to initially determine the scope of its jurisdiction and exercise its expertise to decide whether the slough was in fact a stream. Further, once the status of the slough was determined, there was nothing to prevent plaintiffs from seeking judicial review of the conservation district's declaratory rulings. Because extreme necessity and lack of redress did not exist, a writ of prohibition was inappropriate to stop the conservation district from making the initial ruling on the status of the slough, so the writ was denied. Bitterroot River Protection Ass'n, Inc. v. Bitterroot Conserv. District, 2002 MT 66, 309 M 207, 45 P3d 24 (2002), followed in Paulson v. Flathead Conserv. District, 2004 MT 136, 321 M 364, 91 P3d 569 (2004).

Attorney General's Opinions

Cost of Election — Conservation District Supervisor: Conservation district supervisors were public officers within the meaning of 13-12-213 (now repealed). The county in which voting for a conservation district supervisor election occurs was responsible for paying the expenses incurred by the election. 38 A.G. Op. 25 (1979).

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

- (1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;
- (2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;
- (3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;
- (4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;
- (5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and
- (6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

76-15-106. Conservation district account. There is a conservation district account in the state special revenue fund established by 17-2-102 to be administered by the department of natural resources and conservation for providing funding for conservation districts.

History: En. Sec. 6, Ch. 351, L. 2017.

Compiler's Comments

Effective Date: Section 20(1), Ch. 351, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2017."

Severability: Section 19, Ch. 351, L. 2017, was a severability clause.

Part 2 Creation of Conservation Districts

76-15-201. Petition to create conservation district.

- (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the department approve the organization of a conservation district to function in the territory described in the petition.
- (2) The petition must set forth:
 - (a) the proposed name of the district;
 - (b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;
 - (c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but is sufficient if generally accurate;
 - (d) a request that:
 - (i) the department define the boundaries for the district;
 - (ii) a referendum be held within the territory defined on the question of the creation of a conservation district in the territory; and
 - (iii) the department determine that a district be created.
- (3) Where more than one petition is filed covering parts of the same territory, the department may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2); amd. Sec. 1, Ch. 76, L. 1985; amd. Sec. 270, Ch. 418, L. 1995.

76-15-202. Hearing on petition.

- (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.
- (2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-203. Hearing procedure if additional territory to be included. If it appears to the department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the department shall adjourn the hearing and shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district. The further hearing must be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 271, Ch. 418, L. 1995.

76-15-204. Determination of need for district.

- (1) After the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.
- (2) If the department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made on the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 272, Ch. 418, L. 1995.

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the department shall consider the topography of the area considered and of the state, the composition of soils in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 273, Ch. 418, L. 1995.

76-15-206. Determination of administrative practicability of district. After the department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory

and has defined the boundaries of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 274, Ch. 418, L. 1995.

76-15-207. Referendum on question of creating district.

- (1) To assist the department in the determination of administrative practicability and feasibility, the department shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.
- (2) The question must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of,, and" and "Against creation of a conservation district of the lands below described and lying in the county(ies) of and" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot must set forth the boundaries of the proposed district as determined by the department.
- (3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 275, Ch. 418, L. 1995.

76-15-208. Administration of hearings and referenda.

- (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.
- (2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

Administrative Rules

ARM 36.6.101 Conduct of referendum.

76-15-209. Procedure following referendum.

- (1) The department shall publish the result of the referendum, and shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.
- (2) If the department determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization

of the district in the manner provided in this chapter.

- (3) If the department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken on the petitions in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 276, Ch. 418, L. 1995.

76-15-210. Criteria for determining administrative practicability.

- (1) In making its determination, the department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.
- (2) The department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 277, Ch. 418, L. 1995.

76-15-211. Appointment of supervisors. If the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided in this part, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 278, Ch. 418, L. 1995.

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

- (1) The two appointed supervisors shall present to the secretary of state an application signed by them, which must set forth:
 - (a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the department has appointed them as supervisors;
 - (b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

- (c) the term of office of each of the supervisors;
- (d) the name which is proposed for the district; and
- (e) the location of the principal offices of the supervisors of the district.
- (2) The application must be subscribed and sworn to by each of the supervisors.
- (3) (a) The application must be accompanied by a statement by the department which shall certify that:
 - (i) a petition was filed, notice issued, and hearing held as provided in this part;
 - (ii) the department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries of the district;
 - (iii) notice was given and a referendum held on the question of the creation of the district; and
 - (iv) the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that the department determined that the operation of the proposed district is administratively practicable and feasible.
- (b) The statement must also set forth the boundaries of the district as they have been defined by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 279, Ch. 418, L. 1995.

76-15-213. Processing of application by secretary of state.

- (1) The secretary of state shall examine the application and statement, and if the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the secretary of state's office.
- (2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall certify that fact to the department. The department shall submit to the secretary of state a new name for the district which is not subject to the defects. Upon receipt of the new name free of defects, the secretary of state shall record the application and statement with the modified name in an appropriate book of record in the secretary of state's office.
- (3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 280, Ch. 418, L. 1995.

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

Attorney General's Opinions

Soil Conservation District Employees as County Employees: Although soil conservation districts are distinct governmental entities covering more than one county and the statutes governing the districts do not expressly designate district personnel as county employees to be included on the county payroll, if a county does include district personnel on its payroll, giving them the same benefits received by other county employees, to that extent district personnel must be considered county employees. 39 A.G. Op. 38 (1981).

Conflict With Powers of Conservation Districts: Title 75, ch. 7, on lakeshore protection does not conflict with the statutory powers of conservation districts. 36 A.G. Op. 97 (1976).

Jurisdiction Over State Waters: State conservation districts do not have jurisdiction over state waters. 36 A.G. Op. 97 (1976).

76-15-216. Limitation on territory included in district. The boundaries of the district must include the territory as determined by the department, but may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 281, Ch. 418, L. 1995.

Cross-References

Combination or division of districts, 76-15-803.

Part 3 Administration of Conservation Districts

76-15-301. Establishment of supervisor areas and reorganization of district governing bodies.

- (1) (a) A conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.
- (b) Each supervisor area must be represented by one supervisor. If less than five supervisor areas are established, a sufficient number of supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).
- (2) (a) In a district containing no incorporated municipalities that are completely within

the boundaries of the district, the department shall, upon passage of a resolution by the district to transition to seven supervisors, reorganize the district as provided in 76-15-305 and this subsection (2).

- (b) A district that is reorganized pursuant to this section may be divided into no more than seven supervisor areas.
- (3) If provided by ordinance of the district, a supervisor must reside in the area the supervisor represents.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12); (2)En. Sec. 1, Ch. 173, L. 1983; amd. Sec. 1, Ch. 473, L. 1983; amd. Sec. 2, Ch. 76, L. 1985; amd. Sec. 282, Ch. 418, L. 1995; amd. Sec. 1, Ch. 162, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 162 in (1)(b) deleted second and third sentences that read: "If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county"; in (2)(a) substituted current language for "In a district containing no incorporated municipalities, the department may reorganize the district into seven supervisor areas"; inserted (2)(b) limiting supervisor areas in reorganized districts; inserted (3) regarding supervisor's residence; and made minor changes in style. Amendment effective April 8, 2011.

1985 Amendment: In (1)(b) inserted second and third sentences requiring that certified copy of ordinance be submitted to affected county election administrator and that sufficient supervisors-at-large be elected if less than five supervisor areas are established.

1983 Amendments: Chapter 173 enacted (2), allowing Board to reorganize district into seven supervisor areas in district containing no incorporated municipalities, as a separate section. The Code Commissioner codified it as a subsection.

76-15-302. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 3, Ch. 76, L. 1985; amd. Sec. 67, Ch. 44, L. 2007.

76-15-303. Election of supervisors — election by acclamation — appointment.

- (1) An election for supervisors must be conducted in accordance with Title 13, chapter 1, part 5.
- (2) All qualified electors within the district are eligible to vote in the election.
- (3) The candidate or, if more than one supervisor position is to be filled by the election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.
- (4) The names of the candidates must be arranged on ballots as prescribed in 13-12-205.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979; amd. Sec. 4, Ch. 76, L. 1985; amd. Sec. 2, Ch. 576, L. 1985; amd. Sec. 1, Ch. 184, L. 1995; amd. Sec. 10, Ch. 254, L. 1999; amd. Sec. 90, Ch. 414, L. 2003; amd. Sec. 239, Ch. 49, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 49 inserted (1) referencing Title 13, chapter 1, part 5; in (3) at beginning deleted "Except as provided in subsection (5)" and before "election" inserted "general"; in (4)

at beginning deleted “In the general election” and substituted “candidates” for “individuals nominated”; deleted former (4) and (5) (see 2015 Session Law for former text); and made minor changes in style. Amendment effective November 4, 2015.

2003 Amendment: Chapter 414 in (3) substituted “arranged on ballots as prescribed in 13-12-205” for “printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an “X” mark in the square before any three names to indicate the elector’s preference”. Amendment effective October 1, 2003.

1999 Amendment: Chapter 254 inserted third sentence in (5)(c) regarding term of office for supervisor elected by acclamation or appointed; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 184 in (2), at beginning, inserted exception clause; inserted (5) relating to situations in which the number of candidates is equal to or less than the number of positions to be elected, when the governing body may require an election to be held, and what happens if an election is not held; and made minor changes in style.

1985 Amendments: Chapter 76 at beginning of (2), substituted “The candidate or, if more than one supervisor position is to be filled by the general election, the candidates” for “The three candidates”; near beginning of (3) substituted “the” for “all” before “individuals” and after “nominated” deleted “by petition (if six or fewer) or by election”; and in (4) at end of first sentence substituted “if necessary” for “in which more than four candidates are nominated”.

76-15-304. Election of supervisors.

- (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.
- (2) An election for supervisors must be conducted in accordance with Title 13, chapter 1, part 5.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2); amd. Sec. 240, Ch. 49, L. 2015.

Compiler’s Comments

2015 Amendment: Chapter 49 in (2) substituted current language referencing Title 13, chapter 1, part 5, for former (2) that read: “(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.” Amendment effective November 4, 2015.

Attorney General’s Opinions

Election in Even-Numbered Years: Officers of conservation districts shall be elected at the general election held in November of even-numbered years. 38 A.G. Op. 74 (1980).

76-15-305. Transition to seven supervisors.

- (1) At the time of reorganization under 76-15-301(2), the department shall appoint:
 - (a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and
 - (b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.
- (2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

History: En. Sec. 2, Ch. 173, L. 1983; amd. Sec. 283, Ch. 418, L. 1995; amd. Sec. 241, Ch. 49, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 49 deleted former (3) through (5) that read: "(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors." Amendment effective November 4, 2015.

1995 Amendment: Chapter 418 near end of (1) substituted "department" for "board"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

76-15-306 through 76-15-310 reserved.

76-15-311. Governing body of district.

- (1) If there are no incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.
- (2) If there are incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of seven supervisors as follows:
 - (a) The board of supervisors, in addition to five elected supervisors, must consist of two appointed supervisors, making a total of seven supervisors in those districts. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors.
 - (b) Where there are two or more incorporated municipalities that are completely within the boundaries of a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. A municipality may not have more than one appointed supervisor residing in the municipality. The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.
- (3) If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).
- (4) A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.
- (5) An elected supervisor must reside within the boundaries of the district.
- (6) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd.

Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979; amd. Sec. 3, Ch. 173, L. 1983; amd. Sec. 2, Ch. 473, L. 1983; amd. Sec. 2, Ch. 162, L. 2011; amd. Sec. 242, Ch. 49, L. 2015.

Compiler's Comments

2011 Amendment: Chapter 162 in (1), (2), and (2)(b) inserted "that are completely"; in (2)(a) deleted second sentence that read: "The two appointed supervisors must be residents of municipalities within the district"; in (2)(b) substituted "two or more" for "more than two" and inserted last sentence requiring that legislative bodies agree on appointed supervisors; inserted (3) regarding transition to seven-member board; inserted (4) regarding residence of supervisors; inserted (5) requiring supervisor to reside in district; and made minor changes in style. Amendment effective April 8, 2011.

76-15-312. Term of office and vacancies.

- (1) (a) The term of office of each supervisor is 4 years, except as provided in subsection (1) (b).
- (b) The supervisors who are appointed by the department pursuant to 76-15-305 must be designated to serve for terms of 2 years from the date of their appointment, after which the offices must be filled by election. A supervisor appointed pursuant to 76-15-311 shall serve a term of 3 years.
- (c) An elected supervisor holds office until a successor has been elected and has qualified.
- (2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:
 - (a) death;
 - (b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
 - (c) resignation;
 - (d) removal from office;
 - (e) unexcused absence from three consecutive regular meetings of the board of supervisors;
 - (f) ceasing to reside in the district;
 - (g) conviction of a felony or a violation of official duties; or
 - (h) the decision of a court declaring void the incumbent's election or appointment.
- (3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.
- (4) A vacancy occurring in the office of an elected supervisor must be filled by appointment by the remaining supervisors until the next election, when a successor must be elected to serve the unexpired term. The election must be conducted in accordance with Title 13, chapter 1, part 5, in the year following the appointment.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 1, Ch. 223, L. 1989; amd. Sec. 2526, Ch. 56, L. 2009; amd. Sec. 3, Ch. 162, L. 2011; amd. Sec. 243, Ch. 49, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 49 in (1)(a) substituted "as provided in subsection (1)(b)" for "that"; in (1)(b) after "who are" deleted "first", after "department" inserted "pursuant to 76-15-305", after "appointment" inserted "after which the offices must be filled by election", and inserted last sentence

regarding term of an appointed supervisor; in (4) in middle before “election” deleted “regular” and inserted last sentence referencing Title 13, chapter 1, part 5; and made minor changes in style. Amendment effective November 4, 2015.

2011 Amendment: Chapter 162 in (2)(f) substituted “reside in the district” for “be a resident of the district”. Amendment effective April 8, 2011.

76-15-313. Operation of supervisors.

- (1) The supervisors shall annually elect a presiding officer from their members.
- (2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.
- (3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for the supervisor’s services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of the supervisor’s duties. However, a supervisor may not receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979; amd. Sec. 3, Ch. 473, L. 1983; amd. Sec. 2527, Ch. 56, L. 2009.

Compiler’s Comments

1983 Amendment: In (2), inserted “except as otherwise specifically provided”; and in (3) in first sentence, substituted language concerning compensation for “Except for special projects in which funds are available, a supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties.”, and inserted last sentence prohibiting compensation for regularly scheduled board of supervisors’ meeting.

76-15-314. Removal of a supervisor. A supervisor may be removed by the department and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 223, L. 1989; amd. Sec. 284, Ch. 418, L. 1995.

76-15-315. Administrative functions of supervisors.

- (1) The supervisors may employ a secretary and other officers, agents, and employees, permanent and temporary, that they may require and shall determine their qualifications, duties, and compensation.
- (2) The supervisors may delegate to their presiding officer, to one or more supervisors, or to one or more agents or employees powers and duties that they consider proper.
- (3) The supervisors shall furnish to the department copies of ordinances, rules, orders, contracts, forms, and other documents that they adopt or employ and other information concerning their activities that may be required in the performance of their duties under this chapter.

- (4) The supervisors shall:
- (a) provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property;
 - (b) provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and
 - (c) provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2528, Ch. 56, L. 2009.

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance.

- (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for the legal services they may require, or they may employ their own counsel and legal staff.
- (2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967;

amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979; amd. Sec. 4, Ch. 473, L. 1983; amd. Sec. 285, Ch. 418, L. 1995.

Cross-References

County Attorney to act as counsel for district, 7-4-2711.

Attorney General's Opinions

County Attorney to Provide Legal Services: Sections 7-4-2711 and 76-15-319 require the County Attorney to provide upon request such legal services as the conservation district may require. 38 A.G. Op. 73 (1980).

State Conservation Districts — Legal Representation: The Attorney General is responsible for civil legal representation upon request of a state conservation district, but private counsel may be employed as Special Assistant Attorneys General. The compensation may be set by the Supervisors and becomes a district obligation. County Attorneys' duty to represent districts extends only to giving their opinion in writing to the officers of the district on matters pertaining to their offices. (Opinion rendered prior to 1979 amendment.) 37 A.G. Op. 76 (1977).

76-15-320. Legal status of district — immunity.

- (1) A conservation district and the supervisors of a conservation district may:
 - (a) sue and be sued in the name of the district;
 - (b) satisfy a judgment or settlement pursuant to 2-9-316;
 - (c) have a seal that is judicially noticed;
 - (d) have perpetual succession unless terminated as provided in this chapter;
 - (e) implement Title 75, chapter 7, part 1; and
 - (f) make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- (2) A conservation district, conservation district supervisor, or conservation district employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities pursuant to Title 75, chapter 7, part 1, or this chapter, unless the act or omission constitutes gross negligence, was committed in bad faith, or was committed with malicious purpose.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 2, Ch. 23, L. 1999.

Attorney General's Opinions

Conflict With Powers of Conservation Districts: Title 75, ch. 7, on lakeshore protection does not conflict with the statutory powers of conservation districts. 36 A.G. Op. 97 (1976).

Jurisdiction Over State Waters: State conservation districts do not have jurisdiction over state waters. 36 A.G. Op. 97 (1976).

- ## **76-15-321. Rulemaking authority.** A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

Cross-References

Applicability of Montana Administrative Procedure Act, Title 2, ch. 4.

Attorney General's Opinions

Conflict With Powers of Conservation Districts: Title 75, ch. 7, on lakeshore protection does not conflict with the statutory powers of conservation districts. 36 A.G. Op. 97 (1976).

Jurisdiction Over State Waters: State conservation districts do not have jurisdiction over state waters. 36 A.G. Op. 97 (1976).

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Repealed. Sec. 1, Ch. 65, L. 2017.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

76-15-324. Minutes. The board of supervisors shall submit the minutes of its proceedings for electronic storage within 30 days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 12. The board of supervisors shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the district.

History: En. Sec. 22, Ch. 262, L. 2015.

Part 4

Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation.

- (1) A conservation district and the supervisors thereof shall have the power to:
 - (a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;
 - (b) publish the results of such surveys, investigations, or research; and
 - (c) disseminate information concerning such preventive and control measures and works of improvement.
- (2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

- (1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and
- (2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors of the conservation district may:

- (1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands;
- (2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water, including but not limited to engineering operations, range management, methods of cultivation, growing vegetation, changes in use of land, and the measures listed in 76-15-101(3) on:
 - (a) lands within the district and owned or controlled by the state with the cooperation of the agency administering and having jurisdiction of the lands; or
 - (b) any other lands within the district upon obtaining the consent of the occupier of the lands or the necessary rights or interests in the lands;
- (3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any governmental or other agency or any occupier of lands within the district, subject to any conditions that the supervisors consider necessary to advance the purposes of this chapter, to conduct or complete:
 - (a) erosion control and prevention operations; and
 - (b) works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district;
- (4) construct, improve, operate, and maintain any structures that are necessary or convenient for the performance of any of the operations authorized in this chapter;
- (5) purchase, lease, or otherwise take over and administer projects undertaken by the United States or the state within the district boundaries for:
 - (a) soil conservation;
 - (b) flood prevention;
 - (c) drainage;
 - (d) irrigation;
 - (e) water management;
 - (f) erosion control; or
 - (g) erosion prevention;

- (6) manage, as agent of the United States or of the state any of the types of projects identified in subsection (5) within its boundaries;
- (7) act as agent for the United States or for the state in connection with the acquisition, construction, operation, or administration of any of the types of projects identified in subsection (5) within its boundaries;
- (8) accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States, from the state, or from any other source and use or expend funds or other contributions to conduct its operations;
- (9) execute its duties and responsibilities under Title 75, chapter 7, part 1, pursuant to the procedures of this chapter; or
- (10) execute projects for the conservation, development, storage, distribution, and utilization of water, including but not limited to projects for the following purposes:
 - (a) irrigation;
 - (b) flood prevention;
 - (c) drainage;
 - (d) fish and wildlife;
 - (e) recreation;
 - (f) development of power; or
 - (g) supplying water for fire protection, livestock, or public, domestic, industrial, or other uses.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9); amd. Sec. 3, Ch. 23, L. 1999.

76-15-404. Acquisition and management of property.

- (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.
- (2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district,

on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).

76-15-407. Selection and acquisition of water storage sites.

- (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.
- (2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.
- (3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the natural resources projects state special revenue account. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119; amd. Sec. 286, Ch. 418, L. 1995; amd. Sec. 114, Ch. 2, L. 2009.

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.

76-15-410. Disposition of excess water.

- (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.
- (2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5 Financial Aspects of Conservation Districts Loan Program

Part Attorney General's Opinions

Soil Conservation District Employees as County Employees: Although soil conservation districts are distinct governmental entities covering more than one county and the statutes governing the districts do not expressly designate district personnel as county employees to be included on the county payroll, if a county does include district personnel on its payroll, giving them the same benefits received by other county employees, to that extent district personnel must be considered county employees. 39 A.G. Op. 38 (1981).

Election in Even-Numbered Years: Officers of conservation districts shall be elected at the general election held in November of even-numbered years, since conservation districts may be multicounty districts and 13-1-104(1) provides that elections in multicounty districts be held in even-numbered years. 38 A.G. Op. 74 (1980).

76-15-501. Financial management. A conservation district and the supervisors of the conservation district may:

- (1) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness;
- (2) refund or retire an indebtedness or lien against the district or property of the district;
- (3) establish and collect rates, fees, tolls, rents, or other charges for the use of facilities or for services or materials provided. Revenue from these sources may be expended in carrying out the purposes and provisions of this chapter.
- (4) subject to 15-10-420, levy taxes as provided in this part to pay any obligation of the district and to accomplish the purposes of this chapter as provided in this chapter;
- (5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;
- (6) establish a conservation practice loan program as provided in this part; or
- (7) apply for, accept, administer, and expend funds, grants, and loans from the state or federal government or any other source.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15); amd. Sec. 18, Ch. 473, L. 1983; amd. Sec. 4, Ch. 23, L. 1999; amd. Sec. 146, Ch. 584, L. 1999.

Attorney General's Opinions

Mandatory Duty of Board of County Commissioners to Levy Assessment to Support District: Despite the fact that 76-15-516 purports to grant the Board of County Commissioners permissive authority to levy an assessment on the taxable property within a conservation district in order to support the operations of the district, the duty of the Commissioners under 76-15-516 must be read in conjunction with other statutes pertaining to the financing of district operations and construed to require the Commissioners to levy an assessment sufficient to raise the amount reported by the District Supervisors. 39 A.G. Op. 5 (1981).

76-15-502. Allocation of state funds among districts.

- (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.
- (2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part); amd. Sec. 5, Ch. 473, L. 1983; amd. Sec. 5, Ch. 76, L. 1985.

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Repealed. Sec. 8, Ch. 76, L. 1985.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations.

- (1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works in the district, the board of supervisors may:
 - (a) borrow additional funds needed in an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the funds; or
 - (b) request the county commissioners to issue and register warrants in anticipation of further collections.
- (2) Subject to 15-10-420, the board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants may not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220; amd. Sec. 287, Ch. 418, L. 1995; amd. Sec. 196, Ch. 574, L. 2001.

Attorney General's Opinions

Mandatory Duty of Board of County Commissioners to Levy Assessment to Support District: Despite the fact that 76-15-516 purports to grant the Board of County Commissioners permissive authority to levy an assessment on the taxable property within a conservation district in order to support the operations of the district, the duty of the Commissioners under 76-15-516 must be read in conjunction with other statutes pertaining to the financing of district operations and construed to require the Commissioners to levy an assessment sufficient to raise the amount reported by the District Supervisors. 39 A.G. Op. 5 (1981).

76-15-506. Bonds authorized — election.

- (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.
- (2) The board of supervisors may call an election to be held in accordance with Title 13, chapter 1, part 5.
- (3) If from the returns of the election it appears that the majority of votes cast at the election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of the bonds.
- (4) The issuance of bonds must be carried out in accordance with 7-7-4426 and 7-7-4432 through 7-7-4435. The validity of the bonds, use of the bond revenue, and the refunding of the bonds must be done in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501(2) and (3), and 7-7-4502 through 7-7-4505.
- (5) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979; amd. Sec. 244, Ch. 49, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) substituted "an election to be held in accordance with Title 13, chapter 1, part 5" for "a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election"; in (4) substituted "issuance of bonds must" for "authorization of such undertaking, the form, and content shall", after "7-7-4426" deleted "7-7-4427", after "use of" inserted "the bond", and after "refunding" inserted "of the bonds"; and made minor changes in style. Amendment effective November 4, 2015.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a debt service fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such debt service fund promptly at their maturity.
History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221; amd. Sec. 28, Ch. 298, L. 1983.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current ex-

penses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222; amd. Sec. 1, Ch. 135, L. 1991.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206; amd. Sec. 19, Ch. 473, L. 1983.

76-15-513. Division between counties of money to be raised by regular and special assessment.

- (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.
- (2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Regular assessment. The regular assessment in any 1 year is subject to 15-10-420. The valuation must be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208; amd. Sec. 6, Ch. 473, L. 1983; amd. Sec. 3, Ch. 573, L. 1993; amd. Sec. 1, Ch. 36, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 36 at beginning of first sentence deleted "Except as provided in 76-15-531 and 76-15-532" and at end substituted "is subject to 15-10-420" for "may not exceed 1 1/2 mills on the dollar of total taxable valuation or real property within the district"; and made minor changes in style. Amendment effective March 20, 2009.

Taxation — Definition of Real Property: "Real property" for purposes of taxation means both real estate and improvements. 37 A.G. Op. 76 (1977).

76-15-516. Levy of regular and special assessments.

- (1) Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the "... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.
- (2) Subject to the conditions of 15-10-420, 76-15-531, and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the "... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.
- (3) Subject to 15-10-420, the board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment on the taxable value of all taxable property located within the project area. The levy must be known as "... (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209; amd. Sec. 7, Ch. 473, L. 1983; amd. Sec. 4, Ch. 573, L. 1993; amd. Sec. 147, Ch. 584, L. 1999; amd. Sec. 197, Ch. 574, L. 2001.

76-15-517. Repealed. Sec. 2, Ch. 71, L. 2017.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210; amd. Sec. 8, Ch. 473, L. 1983.

76-15-518. Certification of assessment to department of revenue — entry on property tax record. Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in part 6 or this part. The assessment must be certified to the department of revenue and entered on the property tax record of each county.

History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211; amd. Sec. 139, Ch. 27, Sp. L. November 1993; amd. Sec. 148, Ch. 584, L. 1999.

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

76-15-521. Principal county defined. “Principal county” as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215; amd. Sec. 9, Ch. 473, L. 1983.

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and for conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and collected on deposits or investments under a conservation practice loan program and place the same to the credit of the district. The treasurer is responsible for the official bond and for its safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by the treasurer.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216; amd. Sec. 20, Ch. 473, L. 1983; amd. Sec. 1, Ch. 141, L. 1997.

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since the treasurer's last report. The report must be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218; amd. Sec. 2529, Ch. 56, L. 2009.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-516, 76-15-518 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219; amd. Sec. 21, Ch. 473, L. 1983; amd. Sec. 5, Ch. 573, L. 1993; amd. Sec. 1, Ch. 71, L. 2017.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

Cross-References

Liens, Title 71, ch. 3.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership.

When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

76-15-530. Conservation district appropriations — administration.

- (1) The state treasurer shall draw warrants payable from appropriations of allocations authorized as provided under 15-35-108 on order from the department.
- (2) The department shall administer the conservation district appropriations referred to in subsection (1). The money must be distributed to the conservation districts on the basis of need. A conservation district may submit an application to the department for a grant of funds for purposes that conservation districts are authorized to perform.
- (3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.
- (4) The department may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: En. Sec. 2, Ch. 479, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 288, Ch. 418, L. 1995; amd. Sec. 67, Ch. 509, L. 1995.

76-15-531. Special administrative assessment permitted — voter approval.

- (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment for administrative costs and expenses of the district if the qualified electors of the district approve the imposition of the additional assessment at an election held as provided in 15-10-425.
- (b) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.
- (2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.
- (3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.
- (4) The resolution referring the special administrative assessment question must state:
 - (a) the rate of the assessment;
 - (b) the amount of money anticipated to be raised by the assessment; and
 - (c) the purposes for which the special administrative assessment revenue may be used.

History: En. Sec. 1, Ch. 573, L. 1993; amd. Sec. 32, Ch. 495, L. 2001; amd. Sec. 198, Ch. 574, L. 2001.

76-15-532. Limitations — reduction or repeal of special administrative assessment.

- (1) In each year following the approval of the special administrative assessment as provided in 76-15-531, the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.
- (2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.
- (3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

History: En. Sec. 2, Ch. 573, L. 1993.

76-15-533 through 76-15-540 reserved.

76-15-541. Conservation practice loan program — definition.

- (1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.
- (2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.
- (3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in

furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States natural resources conservation service.

History: En. Sec. 11, Ch. 473, L. 1983; amd. Sec. 281, Ch. 42, L. 1997.

76-15-542. Conservation practice loan account.

- (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.
- (2) Conservation practice loan repayments, including principal, interest, if any, and administrative fees or charges for loans must be deposited in the conservation practice loan account. Interest earned from deposits or investment of funds must be credited to the conservation practice loan account unless the district directs the county treasurer to deposit the interest earned into the conservation district general operating account.
- (3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program. Interest paid and collected on the deposits or investments of a conservation practice loan account may be used for the general operations of a conservation district.

History: En. Sec. 12, Ch. 473, L. 1983; amd. Sec. 2, Ch. 141, L. 1997.

76-15-543. Application for loan.

- (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.
- (2) The application must include a conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 13, Ch. 473, L. 1983; amd. Sec. 282, Ch. 42, L. 1997.

76-15-544. Eligibility for loan. A district may award a loan to a land occupier to finance a conservation practice only if a majority of the district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

- (1) the conservation practice will be economically feasible;
- (2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;
- (3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and
- (4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

History: En. Sec. 14, Ch. 473, L. 1983.

76-15-545. Criteria for evaluation of loan applicants — preferences.

- (1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under 76-15-544:
 - (a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;
 - (b) the feasibility and practicality of the project;
 - (c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;
 - (d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and
 - (e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.
- (2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:
 - (a) applicants who have not previously received a conservation practice loan; and
 - (b) applications for a group or cooperative conservation practice.

History: En. Sec. 15, Ch. 473, L. 1983.

76-15-546. Terms and conditions of loan. A conservation practice loan is subject to the following terms and conditions:

- (1) The district shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.
- (2) The term of the loan may not be greater than the life of the project and may not exceed 30 years.
- (3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.
- (4) A conservation practice must be completed according to United States natural resources conservation service standards and specifications, if applicable.

History: En. Sec. 16, Ch. 473, L. 1983; amd. Sec. 283, Ch. 42, L. 1997; amd. Sec. 3, Ch. 141, L. 1997.

76-15-547. Rules for loan program. The district shall adopt rules:

- (1) prescribing the form and content of applications for loans and plans for the resource conservation practice;
- (2) governing the application of the criteria and preferences for awarding loans;
- (3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;
- (4) providing for the confidentiality of financial statements submitted;
- (5) prescribing the conditions for making loans;
- (6) establishing the interest rate, if any, for the loans; and
- (7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

History: En. Sec. 17, Ch. 473, L. 1983; amd. Sec. 4, Ch. 141, L. 1997.

Part 6

Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse on the protest the date of its receipt by the secretary.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part); amd. Sec. 2530, Ch. 56, L. 2009.

76-15-605. Board decision.

- (1) The report of 76-15-603 must be presented and read at the hearing on the petition.
- (2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision must be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.
- (3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.
- (4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the

purpose of determining whether or not the project area must be created. The election must be conducted in accordance with Title 13, chapter 1, part 5.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979; amd. Sec. 245, Ch. 49, L. 2015.

76-15-606. Election procedure.

- (1) The question must be submitted to the electors by ballot on which the words “For creation of proposed project area” and “Against creation of proposed project area” must appear, with a square before each proposition and directions to insert an “X” mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the project area.
- (2) A person is not entitled to vote at the election unless the person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which the person proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part); amd. Sec. 2531, Ch. 56, L. 2009.

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected.

- (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

- (2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area.

- (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.
- (2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-622. Financing of project area expenses.

- (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.
- (2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-623. Administration of special assessment.

- (1) Subject to 15-10-420, when the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of the county in which there lies any portion of a project area may annually at the time of levying county taxes levy a special assessment on the taxable value of all taxable property in the project area. The levy must be known as the "... (name of district) soil and water conservation

district special assessment” and must be sufficient to raise the income reported to it in the estimate of the supervisors.

- (2) Each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable value bears to the total taxable value of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part); amd. Sec. 149, Ch. 584, L. 1999; amd. Sec. 199, Ch. 574, L. 2001.

76-15-624. Disposition of funds — insufficient revenue.

- (1) Funds produced each year by this special tax levy shall be available until spent.
- (2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7 Land Use Regulations

76-15-701. Adoption of land use regulations.

- (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.
- (2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Attorney General's Opinions

Extent of Conservation District Implementation of Land Use Regulations Regarding Coal Bed Methane Wastewater Operations: The Legislature did not intend that the listing in 76-15-706 of measures necessary to protect soil and water limit the flexibility of conservation districts to devise means to control the adverse effects of coal bed methane runoff. Thus, a conservation district has authority under 76-15-706, following a referendum by the voters, to implement land use regulations in order to implement reasonable measures to conserve soils, protect soil structure from coal bed methane water, and conserve the water resources of the conservation district. 50 A.G. Op. 9 (2004).

Supervisors' Review of Impact on Land Between Stream Crossings: District Supervisors do not have authority under The Natural Streambed and Land Preservation Act of 1975 (Title 75, ch. 7, part 1) to review the route of a proposed pipeline within the county at places other than stream crossings. This

is true even though a lawful review of several stream crossings may amount to a review of the land between the crossings, since the Act and the standards adopted by the Board of Natural Resources and Conservation (functions now transferred to Department of Natural Resources and Conservation) make clear that the review applies only to the stream sites themselves. However, the Supervisors may formulate regulations under this section to address the issue of land use in their jurisdiction. 39 A.G. Op. 2 (1981).

76-15-702. Referendum on proposed land use regulations.

- (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.
- (2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.
- (3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations.

- (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

- (2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.
- (3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations.

- (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:
 - (a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;
 - (b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, and lister furrowing; sowing, planting, and strip cropping; seeding and planting of lands with water-conserving and erosion-preventing plants, trees, and grasses; and forestation and reforestation;
 - (c) specifications of cropping and range programs and tillage and grazing practices to be observed;
 - (d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; and
 - (e) provisions for other means, measures, operations, and programs that may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.
- (2) The regulations must provide for the establishment of a board of adjustment pursuant to 76-15-721.
- (3) The regulations must be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of threatened or existing erosion, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part); amd. Sec. 1, Ch. 194, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 194 inserted (2) concerning establishment of board of adjustment; and made minor changes in style. Amendment effective April 8, 2015.

Attorney General's Opinions

Extent of Conservation District Implementation of Land Use Regulations Regarding Coal Bed Methane Wastewater Operations: The Legislature did not intend that the listing in this section of measures necessary to protect soil and water limit the flexibility of conservation districts to devise means to control the adverse effects of coal bed methane runoff. Thus, a conservation district has authority under this section, following a referendum by the voters, to implement land use regulations in order to implement reasonable measures to conserve soils, protect soil structure from coal bed methane water, and conserve the water resources of the conservation district. 50 A.G. Op. 9 (2004).

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

- (1) setting forth:
 - (a) the adoption of the ordinance prescribing land use regulations;
 - (b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and
 - (c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and
- (2) praying the court:
 - (a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and
 - (b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).

76-15-710. Court procedure after petition is filed.

- (1) Upon the presentation of a petition as described in 76-15-709, the court shall cause process to be issued against the defendant and shall hear the case. If it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence that it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which must constitute a part of the proceedings upon which the determination of the court is made.
- (2) In all cases in which the person in possession of lands who fails to perform work, operations, or avoidances is not the owner, the owner of the lands must be joined as party defendant.
- (3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate the performance within the time specified in the order of the court and to prosecute the performance to completion with reasonable diligence, the supervisors may

enter upon the lands involved and perform the work or operations or otherwise bring the condition of the land into conformity with the requirements of the regulations and recover the costs and expenses of the work or operations, with interest at the rate of 10% a year, from the defendant.

- (4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of the work pursuant to the order of the court, the supervisors may file a petition with the court, a copy of which must be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and asking judgment for the costs and expenses with interest. The court has jurisdiction to enter judgment for the amount of the costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including reasonable attorney fees to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5); amd. Sec. 6, Ch. 76, L. 1985; amd. Sec. 2532, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Near end of (3) and (4) increased interest rate from 5% to 10%.

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment.

- (1) A board of adjustment consisting of three members must be appointed to decide a petition for variance pursuant to 76-15-723.
- (2) (a) (i) On filing of a petition pursuant to 76-15-723, the department shall appoint members to the board of adjustment, subject to the approval of the district supervisors.
- (ii) After a board is appointed pursuant to subsection (2)(a)(i), that board serves until it reaches a final decision on the petition.
- (b) The members may be removed by the department, on notice and hearing, only for neglect of duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of the district.
- (c) Employees of the department and the supervisors of the district are ineligible to appointment as members of the board of adjustment.
- (3) Vacancies in the board of adjustment must be filled in the same manner as original appointments.
- (4) The members of the board of adjustment receive compensation for their services at the rate of \$25 a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the presiding officer of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1); amd. Sec. 7, Ch. 76, L. 1985; amd. Sec. 289, Ch. 418, L. 1995; amd. Sec. 2, Ch. 194, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 194 deleted former (1) that read: "(1) When the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment"; in (1) substituted current text for "The board of adjustment consists of three members, each to be appointed for a term of 3 years, except that the members first appointed must be appointed for terms of 1, 2, and 3 years, respectively"; substituted (2)(a) concerning appointment by department and term of board for "The members of each board of adjustment must be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established"; in (3) at end after "original appointments" deleted "and are for the unexpired term of the member whose term becomes vacant"; and made minor changes in style. Amendment effective April 8, 2015.

76-15-722. Operation of board of adjustment.

- (1) The board of adjustment shall adopt rules to govern its procedures. The rules must be in accordance with this chapter and with the ordinance establishing the board of adjustment.
- (2) The board shall elect a presiding officer from among its members. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. Any two members of the board constitute a quorum. The presiding officer or in the presiding officer's absence another member of the board that the presiding officer may designate to serve as acting presiding officer may administer oaths and compel the attendance of witnesses.
- (3) All meetings of the board must be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which must be filed in the office of the board and are a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979; amd. Sec. 2533, Ch. 56, L. 2009; amd. Sec. 3, Ch. 194, L. 2015.

76-15-723. Petition for variance.

- (1) A qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of the elector carrying out upon the elector's lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and asking the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.
- (2) Copies of the petition must be served by the petitioner upon the presiding officer of the supervisors of the district within which the petitioner's lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 2534, Ch. 56, L. 2009.

76-15-724. Hearing on petition for a variance.

- (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.
- (2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the

variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision.

- (1) If, upon the facts presented at the hearing, the board of adjustment determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.
- (2) Upon the basis of the findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:
 - (a) will relieve the great practical difficulties or unnecessary hardship;
 - (b) will not be contrary to the public interest; and
 - (c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979; amd. Sec. 290, Ch. 418, L. 1995.

76-15-726. Appeal to district court from board decision.

- (1) A petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board of adjustment be modified or set aside.
- (2) A copy of the petition must immediately be served upon the parties to the hearing before the board of adjustment, and after service the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board of adjustment.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 291, Ch. 418, L. 1995.

76-15-727. Court proceedings.

- (1) Upon the filing, the court shall cause notice of the filing to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined in the proceedings, may grant temporary relief as it considers just and proper, and make and enter a decree enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order of the board of adjustment.
- (2) A contention that is not urged before the board of adjustment may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board of adjustment as to the facts, if supported by evidence, are conclusive.

- (3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board of adjustment, the court may order the additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.
- (4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 292, Ch. 418, L. 1995.

Part 8

Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts.

- (1) A petition may be filed with the department for the division of any district, for the combination of any two or more districts, or for the division of a district and the combination of any divided part of a district with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition must be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. When a petition is filed, the department shall within 30 days give notice of a public hearing on the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the department shall determine from the hearing record whether the proposed division, the combination, or the division and combination of territory is administratively practicable and feasible. In making the determination, the department shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.
- (2) If the department determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the department shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the department shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.
- (3) When a district is divided, the supervisors of the district shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion in the district, and other relevant factors. A statement of the allocation must be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. If the supervisors fail to make or to agree upon the allocation, the division must be made by the department after a hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4); amd. Sec. 293, Ch. 418, L. 1995.

76-15-804. Petition to discontinue all or part of district.

- (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department requesting the termination of the operations of the district or a part of the district and the discontinuance of the existence of the district or that part of the district.
- (2) The department may conduct public meetings and public hearings upon the petition that are necessary to assist it in the consideration of the petition.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1); amd. Sec. 10, Ch. 473, L. 1983; amd. Sec. 294, Ch. 418, L. 1995.

76-15-805. Referendum on question of discontinuance.

- (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.
- (2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Decision in case of petition for discontinuance of entire district.

- (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.
- (2) If the department determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.
- (3) If the department determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a); amd. Sec. 295, Ch. 418, L. 1995.

76-15-807. Decision in case of petition for discontinuance of portion of district.

- (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.
- (2) If the department determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.
- (3) If the department determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b); amd. Sec. 296, Ch. 418, L. 1995.

76-15-808. Criteria for decision on discontinuance.

- (1) In making the determination, the department shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the

referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

- (2) The department may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4); amd. Sec. 297, Ch. 418, L. 1995.

76-15-809. Procedure to terminate district.

- (1) Upon certification of the department that the department has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.
- (2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay the proceeds of the sale into the state treasury.
- (3) The supervisors shall file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the department, setting forth the determination of the department that the continued operation of the district or part of the district is not administratively practicable and feasible. The application must state that the property of the district or part of the district has been disposed of and the proceeds paid to the treasury as provided in 76-15-804 through 76-15-810 and must set forth a full accounting of the properties and proceeds of the sale.
- (4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5); amd. Sec. 298, Ch. 418, L. 1995.

76-15-810. Effect of termination.

- (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.
- (2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.
- (3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

Part 9 Coal Bed Methane Protection

76-15-901. Short title. This part may be cited as the “Coal Bed Methane Protection Act”.

History: En. Sec. 1, Ch. 531, L. 2001.

76-15-902. Legislative findings and declaration of purpose.

- (1) The legislature finds that the need for an economical supply of clean-burning energy is a national and state priority.
- (2) The legislature further finds that Montana possesses plentiful reserves of clean-burning natural gas contained in coal beds.
- (3) The legislature further finds that the extraction of natural gas from coal beds may result in unanticipated adverse impacts to land and to water quality and availability.
- (4) The legislature declares that there is a compelling public need to promote efforts that preserve the environment and protect the right to use and enjoy private property. The legislature further declares that the purpose of this part is to establish a long-term coal bed methane protection account and a coal bed methane protection program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells.
- (5) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators that own, develop, or operate coal bed methane wells and collection systems of their legal obligation to compensate landowners and water right holders for damages caused by the development of coal bed methane.
- (6) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators from:
 - (a) any liability associated with the exploration or development of coal bed methane; or
 - (b) the responsibility to comply with any applicable provision of Titles 75, 82, and 85 and any other provision of law applicable to the protection of natural resources or the environment.

History: En. Sec. 2, Ch. 531, L. 2001.

76-15-903. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) “Agricultural production” means the production of:
 - (a) any growing grass, crops, or trees attached to the surface of the land; or
 - (b) farm animals with commercial value.
- (2) “Coal bed methane developer or operator” means the person who acquires a lease for the purpose of extracting natural gas from a coal bed.
- (3) “Department” means the department of natural resources and conservation as provided for in Title 2, chapter 15, part 33.
- (4) “Emergency” means the loss of a water supply that must be replaced immediately to avoid substantial damage to a landowner or a water right holder.

History: En. Sec. 3, Ch. 531, L. 2001.

76-15-904. Coal bed methane protection account — use.

- (1) There is a coal bed methane protection account in the state special revenue fund.
- (2) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.
- (3) Subject to the conditions of subsections (4) and (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.
- (4) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.
- (5) Subject to legislative fund transfers, money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905.

History: En. Sec. 4, Ch. 531, L. 2001; amd. Sec. 12, Ch. 522, L. 2003; amd. Sec. 11, Ch. 312, L. 2011.

76-15-905. Coal bed methane protection program — restrictions.

- (1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.
- (2) A conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or water right holder. The procedures must include:
 - (a) a method for submitting an application for compensation for damages caused by coal bed methane development;
 - (b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;
 - (c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and
 - (d) criteria for ranking applications related to available resources.
- (3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:
 - (a) a loss of agricultural production or a loss in the value of land;
 - (b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or
 - (c) the contamination of surface water or ground water that prevents its beneficial use.
- (4) (a) Subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.
- (b) Subject to the conditions of subsections (5) through (8), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water.

- (5) In order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.
- (6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed \$50,000.
- (7) Conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account.
- (8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.
(b) Compensation for an emergency may be made after June 30, 2005.

History: En. Sec. 5, Ch. 531, L. 2001.

Part 10

Procurement and Competitive Bidding

Part Cross-References

Public contracts, Title 18.

Contracts and other obligations, Title 28.

76-15-1001. Power to enter and execute contracts. A conservation district is authorized to make contracts necessary to implement the applicable powers granted by this chapter and to provide for the manner of executing contracts.

History: En. Sec. 1, Ch. 155, L. 2015.

76-15-1002 and 76-15-1003 reserved.

76-15-1004. Service contracts.

- (1) Contracts for architectural, engineering, land surveying, auditing, accounting, or legal services that are estimated to:
 - (a) exceed the amount provided for in 18-8-212 may be entered into by publication of a request for qualifications pursuant to 76-15-1006 and negotiation with the most qualified responder;
 - (b) not exceed the amount provided for in 18-8-212 may be by direct negotiations.
- (2) Contracts in which the majority of the services to be rendered constitute services other than architectural, engineering, land surveying, auditing, accounting, or legal services must be awarded under the procedure provided for in subsection (3).
- (3) Except as provided in subsection (1), contracts may be entered into as follows:
 - (a) When the total contract value is estimated to be less than \$5,000, a procurement technique may be used that best meets the conservation district's needs.
 - (b) When the total contract value is estimated to be between \$5,001 and \$25,000, a limited solicitation procedure must be used by receiving a minimum of three written or oral quotations. The limited solicitation procedure must be documented.
 - (c) When the total contract value is estimated to be greater than \$25,000, a request for proposal or invitation to bid pursuant to 76-15-1006 must be used to select a contractor that best meets the conservation district's needs.

History: En. Sec. 2, Ch. 155, L. 2015.

76-15-1005. Requirements for purchases or construction contracts. For contracts for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under this chapter in excess of the limit provided in 7-5-2301, supervisors shall comply with the provisions of 76-15-1006 and may:

- (1) award the contract to the lowest responsible bidder;
- (2) postpone awarding a contract;
- (3) reject any or all bids; or
- (4) readvertise the contract.

History: En. Sec. 3, Ch. 155, L. 2015.

76-15-1006. Advertisements.

- (1) The advertisement for requests for bids, proposals, or qualifications must be published in a newspaper of general circulation that includes the conservation district.
- (2) A second publication may not be made less than 5 days or more than 12 days before the opening of bids.
- (3) A second publication may not be made less than 5 days or more than 12 days before the deadline for the submission of a request for proposals or a request for qualifications.

History: En. Sec. 4, Ch. 155, L. 2015.

76-15-1007 through 76-15-1010 reserved.

76-15-1011. Exemptions from advertising and bidding.

- (1) When immediate delivery of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion, storm, earthquake, riot, or insurrection, the provisions of 76-15-1005 and 76-15-1006 do not apply if:
 - (a) the supervisors act, by majority vote in an open meeting, in a manner that best meets the emergency and serves the public interest; and
 - (b) the emergency is declared and recorded in the minutes of the board of supervisors meeting.
- (2) Supplies or services may be purchased without bid from government agencies if purchased at a substantial savings.
- (3) Contracts may be entered into by direct negotiations for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under Title 76, chapter 15, for which the cost is less than the limit provided in 7-5-2301.
- (4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase.

History: En. Sec. 5, Ch. 155, L. 2015.

Cross-References

Competitive, advertised bidding required for certain large purchases or construction contracts, 7-5-2301.

76-15-1012. Terms and extensions.

- (1) Prior to the issuance, extension, or renewal of a contract, it must be determined that:
 - (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (b) the contract will serve the best interests of the conservation district by encouraging effective competition or otherwise promoting economies in conservation district procurement.
- (2) A contract may not be made for a period of more than 7 years.
- (3) A contract may be extended or renewed if:
 - (a) the terms of the extension or renewal, if any, are included in the solicitation;
 - (b) funds are available for the first fiscal period at the time of the agreement; and
 - (c) the total contract period, including any extension or renewal, does not exceed 7 years.
- (4) Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.
- (5) If funds are not available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 6, Ch. 155, L. 2015.

76-15-1013. Division of contracts prohibited. Contracts may not be divided or projects split to circumvent the provisions of this part.

History: En. Sec. 7, Ch. 155, L. 2015.

76-15-1014. Cooperative purchasing contracts. A conservation district may, in cooperation with one or more other conservation districts, conduct cooperative purchasing as defined in 18-4-401 for the procurement of supplies or services.

History: En. Sec. 8, Ch. 155, L. 2015.

Cross-References

Cooperative purchasing, Title 18, ch. 4, part 4.

CHAPTER 16 GRAZING DISTRICTS

Part 1 General Provisions

Part Cross-References

Disposition of Taylor Grazing Act funds, 17-3-221, 17-3-222.

76-16-101. Short title. This chapter may be cited as the “Grass Conservation Act”.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part); amd. Sec. 1, Ch. 31, L. 2001.

Case Notes

Grazing District Not Required to Purchase or Substitute Lands to Allow Full Exercise of Grazing Preferences: The statutory language authorizing a grazing district to purchase or substitute lands in order to provide sufficient land under district control upon which members can exercise their grazing preferences is clearly discretionary, and the failure of a district to do so does not in itself constitute an abuse of discretion or breach of a fiduciary duty. The proper method for remedying such a loss of land is found in 76-16-403. Prairie County Co-op St. Grazing District v. Kalfell Ranch, Inc., 269 M 117, 887 P2d 241, 51 St. Rep. 1488 (1994).

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Animal unit” means one cow, one horse, or five sheep, 6 months of age or older.
- (2) “Animal unit month” or “AUM” means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local state district.
- (3) “Assessment” means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.
- (4) “Commensurate property” means land that is privately owned or controlled and that is not range.
- (5) “Commission” means the Montana grass conservation commission provided for in 76-16-112.

- (6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (7) "Dependent commensurate property" is commensurate property that:
 - (a) requires the use of range in connection with it to maintain its proper use;
 - (b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and
 - (c) has been used in connection with the range for a 5-year period immediately preceding the date of organization of the state district.
- (8) "Directors" means the board of directors of a state district provided for in 76-16-301.
- (9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in state district assets.
- (10) "Permits" are evidence of grazing privileges granted by state districts.
- (11) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.
- (12) "Range" is the land within a state district upon which grazing permits are granted to maintain livestock through the established grazing period.
- (13) "Secretary" means the secretary of the Montana grass conservation commission.
- (14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part); amd. Sec. 299, Ch. 418, L. 1995; amd. Sec. 2, Ch. 244, L. 1997; amd. Sec. 1, Ch. 401, L. 1999; amd. Sec. 2, Ch. 31, L. 2001.

Case Notes

Nonprofit Corporation: Under subsection (11) of this section, a grazing district is a nonprofit corporation rather than a subdivision of the state, so its powers are not necessarily limited to those expressly granted. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P2d 915 (1972).

76-16-104. Role of the commission.

- (1) The commission shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.
- (2) The commission may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317; amd. Sec. 300, Ch. 418, L. 1995; amd. Sec. 3, Ch. 244, L. 1997; amd. Sec. 3, Ch. 31, L. 2001.

76-16-105. Repealed. Sec. 45, Ch. 31, L. 2001.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 301, Ch. 418, L. 1995; amd. Sec. 4, Ch. 244, L. 1997.

76-16-106. Commission fees.

- (1) The commission may impose fees against the state districts in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.
- (2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.
- (3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 401, L. 1999; amd. Sec. 4, Ch. 31, L. 2001.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 401, L. 1999; amd. Sec. 5, Ch. 31, L. 2001.

76-16-108. Nature of rights.

- (1) Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.
- (2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3); amd. Sec. 4, Ch. 401, L. 1999; amd. Sec. 6, Ch. 31, L. 2001.

76-16-109. Appeal procedure.

- (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.
- (2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal

with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part); amd. Sec. 302, Ch. 418, L. 1995; amd. Sec. 5, Ch. 401, L. 1999; amd. Sec. 7, Ch. 31, L. 2001.

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-16-111. What constitutes receipt of notice. In all cases where notices are given to permittees under this chapter by certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8); amd. Sec. 6, Ch. 401, L. 1999; amd. Sec. 8, Ch. 31, L. 2001.

76-16-112. Creation of Montana grass conservation commission — membership — meetings — compensation.

- (1) There is a Montana grass conservation commission. The commission is composed of five members appointed by the governor to serve staggered 3-year terms.
- (2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:
 - (i) two members who are either officers of or who serve on the board of directors of a state district;
 - (ii) two members who hold active grazing preference rights within a state district; and
 - (iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state districts for the purpose of livestock production.
- (b) Ex officio members may be appointed by the commission as needed.
- (3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.
- (4) (a) The commission shall meet annually in Montana at a place determined by the presid-

- ing officer.
- (b) The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 7 days' written notice to the commission members of the time and place of the meeting.
 - (c) A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.
 - (5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.
 - (6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission.

History: En. Sec. 33, Ch. 401, L. 1999; amd. Sec. 9, Ch. 31, L. 2001; amd. Sec. 1, Ch. 114, L. 2015.

76-16-113. Powers of commission. The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

- (1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state districts, including appeals of decisions made by the board of directors of an individual state district or other actions taken in accordance with this chapter;
- (2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and state districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter;
- (3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state districts that, for whatever reason, no longer have access to historical grazing preference records;
- (4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;
- (5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;
- (6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;
- (7) requiring state districts to annually furnish itemized financial reports; and
- (8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 34, Ch. 401, L. 1999; amd. Sec. 10, Ch. 31, L. 2001.

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district.

- (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.
- (2) The statement must set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.
- (3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the state district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 7, Ch. 401, L. 1999; amd. Sec. 11, Ch. 31, L. 2001.

76-16-202. Notice and hearing on question of incorporation.

- (1) The persons deciding to incorporate the state district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks in a newspaper of general circulation in the area. The first publication must be at least 30 days prior to the date of hearing.
- (2) The commission shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 303, Ch. 418, L. 1995; amd. Sec. 8, Ch. 401, L. 1999; amd. Sec. 12, Ch. 31, L. 2001.

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the state district, the commission may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 304, Ch. 418, L. 1995; amd. Sec. 9, Ch. 401, L. 1999; amd. Sec. 13, Ch. 31, L. 2001.

76-16-204. Articles of incorporation.

- (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.
- (2) The articles must be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the commission, shall substantially state the following:
 - (a) the name of the state district, the last four words of which must be “cooperative state grazing district”;
 - (b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

- (c) the membership fee for each member of the state district, which may not be more than \$5;
- (d) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;
- (e) the powers of the state district, which may not be inconsistent with this chapter;
- (f) the officers of the state district, their principal duties, and the principal duties of the board of directors;
- (g) the purpose for which the state district is incorporated.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part); amd. Sec. 10, Ch. 401, L. 1999.

Cross-References

Formation of nonprofit corporation, Title 35, ch. 2, part 2.

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-206. Amending articles of incorporation.

- (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the state district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.
- (2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the state district possesses the same powers and is subject to the same obligations as if incorporated under this chapter.

History: En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318; amd. Sec. 11, Ch. 401, L. 1999; amd. Sec. 14, Ch. 31, L. 2001.

76-16-207. Filing of map or plat of state district. A state district shall, upon completion of its organization, file with the commission and the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district showing the allocation of individual allotments, members running in common allotments, allotment names, and references to lands used as base properties, along with a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the commission after a hearing, the state district shall file with the county clerk or clerks and with the commission a revised map or plat indicating the changed boundaries.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 305, Ch. 418, L. 1995; amd. Sec. 12, Ch. 401, L. 1999.

76-16-208. Adoption of bylaws and periodic review — annual report.

- (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated state district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. A review and update must be completed at reasonable intervals, not to exceed 5 years.
- (2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the state district. The annual reports must include an updated plat depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315; amd. Sec. 13, Ch. 401, L. 1999; amd. Sec. 15, Ch. 31, L. 2001.

76-16-209. Alteration of state district.

- (1) A state district may change the boundaries of the state district, merge with another state district organized under this chapter, or subdivide.
- (2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the commission after a hearing.
- (3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11); amd. Sec. 306, Ch. 418, L. 1995; amd. Sec. 14, Ch. 401, L. 1999; amd. Sec. 16, Ch. 31, L. 2001.

76-16-210. Request for dissolution of state district. A state district, with the written consent of three-fourths of its permittee members, may at any time request the commission to dissolve the state district subject to the preferences of this chapter. The commission shall establish procedures for the dissolution of any state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 307, Ch. 418, L. 1995; amd. Sec. 15, Ch. 401, L. 1999.

76-16-211. Dissolution of state district.

- (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the state district is no longer feasible, beneficial, and desirable to the majority of members of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve the state district.
- (2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the state district is located.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b); amd. Sec. 308, Ch. 418, L. 1995; amd. Sec. 16, Ch. 401, L. 1999; amd. Sec. 17, Ch. 31, L. 2001.

76-16-212. Distribution of state district assets.

- (1) When a hearing on the request for dissolution has been held before the commission and the consent of the board of directors has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee members upon the basis of their proportionate interest in the assets.
- (2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. State district members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 17, Ch. 401, L. 1999; amd. Sec. 18, Ch. 31, L. 2001.

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings must be made to the commission by the directors. Upon the approval of the report, the commission shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 309, Ch. 418, L. 1995; amd. Sec. 19, Ch. 31, L. 2001.

Part 3 Organization, Administration, and Operation

Part Cross-References

Maintenance of fences, 76-16-320.

Animals unlawfully running at large, Title 81, ch. 4, part 2.

Herd districts, Title 81, ch. 4, part 3.

Part Attorney General's Opinions

Annual Corporate Report Not Required: A state grazing district organized under Title 76, ch. 16, is not required to file an annual corporation report with the Secretary of State. 36 A.G. Op. 15 (1975).

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the commission as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313; amd. Sec. 20, Ch. 31, L. 2001.

Cross-References

One director to serve on County Planning Board, 76-1-211.

76-16-302. Membership in state district.

- (1) Membership in a state district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the state district, except that the agent of a person entitled to membership in the state district may become a member in place of the agent's principal.
- (2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the state district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the state district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.
- (3) Livestock producers owning or controlling base property within the designated boundaries of the state district and who held grazing preference during the preceding grazing season or at the time of voting must be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 18, Ch. 401, L. 1999; amd. Sec. 21, Ch. 31, L. 2001.

Attorney General's Opinions

Withdrawal of Membership: An individual shall withdraw from a grazing district if he is no longer eligible for membership. The directors of the district should then determine, with the approval of the Department of Natural Resources and Conservation, the rights and interests involved. A member may withdraw from membership in a district if the district's articles of incorporation or bylaws provide conditions and procedures for voluntary withdrawal. If a member of a district continues to be engaged in the livestock business and owns or leases forage-producing land and the district's articles of incorporation and bylaws do not provide for voluntary withdrawal, a member may not unilaterally withdraw from the district. 42 A.G. Op. 127 (1988).

76-16-303. Voting rights. Only permittee members in good standing as set forth in the state district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the state district bylaws.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 19, Ch. 401, L. 1999; amd. Sec. 22, Ch. 31, L. 2001.

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by that member so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved must be determined by the directors of the state district with the approval of the commission.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2); amd. Sec. 20, Ch. 401, L. 1999.

76-16-305. Acquisition and disposal of property. A state district may:

- (1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.
- (2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise.
- (3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

Case Notes

Grazing District Not Required to Purchase or Substitute Lands to Allow Full Exercise of Grazing Preferences: The statutory language authorizing a grazing district to purchase or substitute lands in order to provide sufficient land under district control upon which members can exercise their grazing preferences is clearly discretionary, and the failure of a district to do so does not in itself constitute an abuse of discretion or breach of a fiduciary duty. The proper method for remedying such a loss of land is found in 76-16-403. Prairie County Co-op St. Grazing District v. Kalfell Ranch, Inc., 269 M 117, 887 P2d 241, 51 St. Rep. 1488 (1994).

76-16-306. Management of grazing lands. A state district may:

- (1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.
- (2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;
- (3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Weed control — Department of Agriculture, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

Case Notes

Classification of Lands: For purposes of determining whether a grazing permittee has increased his commensurate rating by additions and improvements, a state grazing district may classify lands as self-furnished grazing lands, even though they are cultivated and not used for grazing. *Burke v. S. Phillips County Co-op St. Grazing District*, 135 M 209, 339 P2d 491 (1959).

Mandamus: Where the action of a grazing district in classifying owners of grazing preferences was a clear violation of the grazing act and no question of administrative discretion was involved, a proceeding in mandamus was proper as against contention that the court was taking over the duties of the district. *State ex rel. Engle v. District Court*, 119 M 319, 174 P2d 582 (1946).

76-16-307. Leasing of state lands. State land that is situated within the boundaries of a state district created under this chapter may be leased by one or more members of a state district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a state district may assist members of a state district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316; amd. Sec. 310, Ch. 418, L. 1995; amd. Sec. 21, Ch. 401, L. 1999; amd. Sec. 23, Ch. 31, L. 2001.

Cross-References

Lease of state grazing lands, 77-6-502, 77-6-504 through 77-6-508.

Case Notes

State Grazing District Not Allowed Lease Preference Right for State Land: The exercise of a preference right, whereby lessees of state-owned land are preferred and may renew their leases by meeting the highest bid submitted, by a grazing district which does not use the land itself and thus cannot further the policy of sustained yield, is an unconstitutional application of the preference right statute. *Grazing districts may obtain state leases only by pure competitive bidding. Jerke v. St. Dept. of Lands*, 182 M 294, 597 P2d 49 (1979).

76-16-308. Regulation of stock grazing in state district. A state district may:

- (1) specify the breed, quality, and number of male breeding animals that each member must furnish when stock is grazing in common in the state district;
- (2) regulate the driving of stock over, across, into, or through the range and collect fees for driving stock.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12); amd. Sec. 22, Ch. 401, L. 1999.

76-16-309. Knowledge of state district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 24, Ch. 31, L. 2001.

76-16-310. Permit required to run livestock in state district.

- (1) An owner or person in control of livestock may not permit livestock to run at large or under herd within the exterior boundaries of a state district unless the owner or person in control of the livestock first obtains a grazing permit from the state district.

- (2) The owner or person in control of livestock running at large or under herd within a state district without a permit from the state district or in excess of the permit is liable for all damages sustained by any member, permittee, or state district that are a result of the person's unpermitted use of the state district. If livestock wrongfully enter a state district, the owner or person in control of the trespassing livestock, who willfully or negligently permits livestock to run at large within the state district without first obtaining a permit from the state district, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not less than \$10 or more than \$500. In addition to a fine, the owner or person is liable for all damages that are caused by the trespassing livestock.
- (3) This provision does not require any person to obtain a grazing permit to graze livestock on land that the person owns or controls within a state district if the stock being grazed are restrained from running at large within the state district and from grazing on any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1); amd. Sec. 25, Ch. 31, L. 2001.

76-16-311. Control of trespassing livestock.

- (1) The state district or its duly authorized agent controlling the land upon which wrongful entry is made by trespassing livestock may take the livestock into its possession and shall reasonably care for the livestock while in its possession and may retain possession of the livestock and have a lien and claim on the livestock as security for payment of damages and reasonable charges for the care of livestock while in its possession.
- (2) The state district taking possession of trespassing livestock shall, within 72 hours after taking possession, notify the owner, owners, or person in charge of the livestock by a notice in writing describing the livestock by number of animals and brands on the livestock, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the livestock thereafter. Charges may not exceed \$2 per animal unit per day. The notice must generally describe the location where the livestock is held and require the owner or owners, within 10 days after receiving the notice, to take the livestock away after making full payment of all damages and costs.
- (3) In case the parties do not agree as to the amount of damages, the state district taking possession of the livestock may at the expense of the owner retain a sufficient number of livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by the state district in a civil action to foreclose its lien, have returned to the owner all livestock held. The state district is liable to the owner for any loss or injury to the livestock accruing through the state district's lack of reasonable care.
- (4) If the state district taking possession of the livestock fails to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the state district shall bear the expense of keeping and feeding the livestock while in its possession. Notice may be given by personal service on the owner, owners, or person in charge of the livestock by sending notice by prepaid registered or certified mail, addressed to that person's last-known place of residence. Service by registered or certified mail is considered complete upon the deposit of the notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3); amd. Sec. 23, Ch. 401, L. 1999.

Cross-References

Application to trespass actions, 76-16-415.

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. If a state district takes possession of livestock after due diligence to discover the owner or possessor of the livestock and the owner or possessor cannot be found or the ownership of the livestock discovered or if a party takes possession of livestock and the owner or claimant refuses to pay the amount of damages or charges or to furnish bonds, as provided in 76-16-311, the state district or person shall, within 10 days from the time that the livestock was taken into possession, deliver to the sheriff of the county in which the livestock was taken into possession or to the nearest state livestock inspector a statement containing the information required to be given in the notice set out in 76-16-311.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 24, Ch. 401, L. 1999.

76-16-316. Sale of trespassing livestock.

- (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.
- (2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in

the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:

- (a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;
- (b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and
- (c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 25, Ch. 401, L. 1999; amd. Sec. 26, Ch. 31, L. 2001.

76-16-317. Disposition of sale proceeds.

- (1) The proceeds of the sale must be applied by the sheriff, after first deducting the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up the livestock. The remainder of the proceeds, if any, may be paid over to the owner of the livestock, if known. If the owner is not known, then the remainder must be deposited with the county treasurer, who shall keep the remainder of the proceeds in a public fund to be designated state district fund (giving the name of the state district). A separate fund, styled as above, must be kept by the county treasurer for each state district within that county. The county treasurer shall record the number, type, and brands, if any, of animals sold, the amount received for the animals, and the amount of deductions. The record must be open to public inspection.
- (2) A person claiming ownership of the livestock and submitting proof of ownership to the board of county commissioners within 1 year from date of sale is entitled to receive any excess received from the sale of the livestock, provided the claim is to the satisfaction of the board.
- (3) Any money received from the sale of the livestock that is not claimed within 1 year after the sale must be transferred to the general fund of the county.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7); amd. Sec. 27, Ch. 31, L. 2001.

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state district or an agent of a state district any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 is guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding \$200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10); amd. Sec. 28, Ch. 31, L. 2001.

76-16-319. No liability for official acts. An officer, the commission, an employee of an officer or the commission, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8); amd. Sec. 311, Ch. 418, L. 1995; amd. Sec. 26, Ch. 401, L. 1999.

76-16-320. Maintenance of fences.

- (1) The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the state district must be borne by the member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the state district.
- (2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the cost of construction and maintenance of fence, the state district's proportionate share of the costs and maintenance must be financed only by assessments levied by the state district against the permittee members of the state district and upon consent by 55% of the permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12); amd. Sec. 29, Ch. 31, L. 2001.

76-16-321. Construction of trespass and fence provisions.

- (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.
- (2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district must be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101. The state district or its members are not liable for damages unless the farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part); amd. Sec. 1, Ch. 249, L. 2015.

76-16-323. State district finances. A state district may:

- (1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;
- (2) set up and maintain a reasonable reserve fund;
- (3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10); amd. Sec. 27, Ch. 401, L. 1999; amd. Sec. 30, Ch. 31, L. 2001.

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with commission orders required.

- (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the state district or county and cite the directors of the state district to appear before the commission.
- (2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the state district shall elect new officers. During the period until the election, the commission may operate and manage the affairs of the state district.
- (3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 312, Ch. 418, L. 1995; amd. Sec. 28, Ch. 401, L. 1999; amd. Sec. 31, Ch. 31, L. 2001.

Part 4 Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences must be distributed in the following manner:

- (1) Any member of a state district owning or controlling dependent commensurate property may be given a grazing preference.
- (2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the grazing preference.
- (3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range 5 years immediately preceding the organization of the state district.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 32, Ch. 31, L. 2001.

76-16-402. Conversion of temporary permittee lands to dependent commensurate property.

- (1) When a temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by the permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by the permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.
- (2) However, temporary permits are privileges granted from year to year, and their possession does not establish a grazing preference right unless a grazing preference right is expressly granted by the state district and in the manner provided in this part.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 33, Ch. 31, L. 2001.

76-16-403. Procedure if reduction in grazing privileges necessary.

- (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.
- (2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 29, Ch. 401, L. 1999; amd. Sec. 34, Ch. 31, L. 2001.

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state district based on dependent commensurate property or commensurate property shall make application within 1 year after the state district is organized to qualify for grazing preference. However, all permittees must be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part); amd. Sec. 35, Ch. 31, L. 2001.

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L.

1939; *amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).*

76-16-406. Transfer of grazing preferences.

- (1) Upon application by a permittee, the state district with the approval of the commission may allow a grazing preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of grazing preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the grazing preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.
- (2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.
- (3) All expenses involved under the application must be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979; amd. Sec. 30, Ch. 401, L. 1999; amd. Sec. 36, Ch. 31, L. 2001.

76-16-407. Processing of application for transfer.

- (1) When an application for transfer is presented to the board of directors of a state district, the secretary of the state district upon the direction of that board shall give notice, setting forth in general the application and the time and place of a hearing on the application as fixed by the board. A copy of the notice must be given or mailed to the applicant and must be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the state district. The notice must also be posted for at least 2 full weeks prior to the hearing in three public places within the state district.
- (2) The date of the hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections to the application.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2); amd. Sec. 37, Ch. 31, L. 2001.

76-16-408. Effect of transfer of grazing preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the grazing preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3); amd. Sec. 38, Ch. 31, L. 2001.

76-16-409. Transfer of underlying property.

- (1) When the land to which a grazing preference is attached changes its control or ownership, the grazing preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.
- (2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing preferences may be revoked by the state district.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 39, Ch. 31, L. 2001.

76-16-410. Compensation to state district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value must be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it must be fixed by the commission.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323; amd. Sec. 40, Ch. 31, L. 2001.

Case Notes

Compensation to Grazing District for Improvements in Which District Involved: Under this section, subsequent owners of land must compensate a grazing district for the value of range improvements constructed with the consent of the owner upon lands leased by the district. However, this section applies only to improvements in which the district itself is involved and does not require a district to collect those funds for payment to a previous lessee. Prairie County Co-op St. Grazing District v. Kalfell Ranch, Inc., 269 M 117, 887 P2d 241, 51 St. Rep. 1488 (1994).

76-16-411. Grazing permits to owners of land not controlled by state district.

- (1) When any land is situated within the boundaries of a state district and is not leased or controlled by the state district and not surrounded by a legal fence, any person owning or controlling these lands has the right to obtain a grazing permit from the state district, the size of which must be determined by the carrying capacity of the land, full consideration being given for location of necessary stock water. The use of the permit is subject to all regulations by the state district.
- (2) If the person owning or controlling the land declines to secure a permit or fails to lease the land to the state district at a fair lease rental and fails to fence the land at the person's expense, the person is not entitled to recover damages for trespass by stock grazing under permit, but the state district may not issue a permit to use the carrying capacity of the land.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part); amd. Sec. 41, Ch. 31, L. 2001.

76-16-412. Revocation of grazing preferences upon failure to obtain permits, pay fees, or obey rules.

- (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.
- (2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 42, Ch. 31, L. 2001.

Case Notes

Competitive Bidding — Revocation of Grazing Preferences and Permit Cancellation Discretionary: Decisions to revoke grazing preferences or to cancel grazing permits are entirely discretionary with the grazing district. Further, a district rule prohibiting competitive bidding against another district member for the lease of grazing lands in the district did not apply in this instance when the land in question was sold rather than leased. Prairie County Co-op St. Grazing District v. Kalfell Ranch, Inc., 269 M 117, 887 P2d 241, 51 St. Rep. 1488 (1994).

76-16-413. Effect of revocation.

- (1) When a grazing preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a grazing preference.
- (2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7); amd. Sec. 31, Ch. 401, L. 1999; amd. Sec. 43, Ch. 31, L. 2001.

76-16-414. Equalization of state district assets.

- (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the state district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.
- (2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be as prescribed by the bylaws of the

state district. The state district may set off the amount of any claim it may have against a former member.

- (3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the grazing preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324; amd. Sec. 32, Ch. 401, L. 1999; amd. Sec. 44, Ch. 31, L. 2001.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

Cross-References

Control of trespassing livestock, 76-16-311.

TITLE 85 WATER USE

CHAPTER 2 SURFACE WATER AND GROUND WATER

Part 3 Appropriations, Permits, and Certificates of Water Rights

85-2-316. State reservation of waters.

- (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.
- (2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:
 - (i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;
 - (ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;
 - (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;
 - (iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;
 - (v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and
 - (vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.
- (b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).
- (3) (a) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.
- (b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.
- (c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.
- (d) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental analysis must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

- (4) (a) Except as provided in 85-20-1401, the department shall issue a state water reservation if the applicant establishes to the department by a preponderance of evidence:
 - (i) the purpose of the reservation;
 - (ii) the need for the reservation;
 - (iii) the amount of water necessary for the purpose of the reservation;
 - (iv) that the reservation is in the public interest.
- (b) In determining the public interest under subsection (4)(a)(iv), the department shall issue a water reservation for withdrawal and transport for use outside the state if the applicant proves by clear and convincing evidence that:
 - (i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and
 - (ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.
- (c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:
 - (i) whether there are present or projected water shortages within the state of Montana;
 - (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;
 - (iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
 - (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.
- (d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.
- (5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.
- (6) (a) Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete.
- (b) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams are not subject to the limit under this subsection (6)(b).
- (7) A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.
- (8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using

- a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.
- (b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.
- (9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.
 - (10) (a) Except for a reservation provided in subsection (6) or a reservation provided in 85-20-1401, the department shall, at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met.
 - (b) The department shall provide the water policy interim committee, established in 5-5-231, a summary of the reviews before September 15, 2026.
 - (c) Following a review pursuant to this subsection (10), at the request of the entity holding a water reservation or when the objectives of a state water reservation are not being met, the department may:
 - (i) extend the time period to complete the appropriation of water;
 - (ii) modify the reservation; or
 - (iii) revoke the reservation.
 - (d) Any undeveloped water made available as a result of a revocation or modification under this subsection (10) is available for appropriation by others pursuant to this part.
 - (11) Except as provided in 85-20-1401, the department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.
 - (12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.
 - (13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

- (14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.
- (15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.
- (16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.

History: En. Sec. 26, Ch. 452, L. 1973; amd. Sec. 11, Ch. 485, L. 1975; amd. Sec. 7, Ch. 416, L. 1977; R.C.M. 1947, 89-890; amd. Sec. 1, Ch. 689, L. 1979; amd. Sec. 1, Ch. 186, L. 1981; amd. Sec. 6, Ch. 357, L. 1981; amd. Sec. 15, Ch. 573, L. 1985; amd. Sec. 1, Ch. 197, L. 1987; amd. Sec. 1, Ch. 389, L. 1989; amd. Sec. 1, Ch. 515, L. 1991; amd. Sec. 6, Ch. 370, L. 1993; amd. Sec. 449, Ch. 418, L. 1995; amd. Sec. 1, Ch. 330, L. 1997; amd. Sec. 9, Ch. 497, L. 1997; amd. Sec. 9, Ch. 70, L. 2005; amd. Sec. 10, Ch. 213, L. 2007; amd. Sec. 1, Ch. 281, L. 2015; amd. Sec. 1, Ch. 121, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 121 in (10)(b) deleted former first sentence that read: "An existing state water reservation subject to the review in subsection (10)(a) that was not reviewed in the 10 years prior to April 23, 2015, must be reviewed by July 1, 2016" and substituted "September 15, 2026" for "September 15, 2016"; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 281 inserted (6)(a) concerning issuance of a state water reservation; in (10)(a) deleted former first sentence that read: "Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete", after "Except" inserted "for a reservation provided in subsection (6) or a reservation", and after "shall" deleted "periodically but"; inserted (10)(b) concerning reviews; in (10)(c) at beginning inserted "Following a review pursuant to this subsection (10), at the request of the entity holding a water reservation or" and after "the department may" substituted (10)(c)(i), (10)(c)(ii), and (10)(c)(iii) for "extend, revoke, or modify the reservation"; and made minor changes in style. Amendment effective April 23, 201

Cross-References

Department powers and duties, 85-2-113.

Reservations within Missouri River Basin and Little Missouri River Basin, 85-2-331.

Suspension of action, 85-2-603.

Reservations, 85-2-605.

Conservancy districts — general provisions, Title 85, ch. 9, part 1.

Administrative Rules

Title 36, chapter 16, subchapter 1, ARM Water reservation rules — application content.

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal grey lines across the entire width of the page, providing a guide for handwriting or typing. The background is a solid off-white color.

Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



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