The Montana Department of Natural Resources & Conservation

Montana Code Annotated 2025

Laws Pertaining to Conservation Districts

Conservation District Law

Natural Streambed and Land Preservation Act

Conservation District Water Reservations

Government Structure and Administration

Includes enactments of the 2025 Session of the 69th Legislature

PREFACE

Montana's conservation districts are local units of government and political subdivisions of the State of Montana, governed by elected boards of supervisors pursuant to state law. They were established by the Legislature in 1939. The state's 58 conservation districts are part of a national network of over 3,000 districts organized across all 50 states. The primary function of a conservation district is to assist landowners, land managers, and other local interests in the conservation and management of soil, water, and related natural resources through locally led programs, technical assistance, and education.

Montana's Natural Streambed and Land Preservation Act of 1975 (the "310 Law"), codified at Montana Code Annotated, title 75, chapter 7, part 1, requires any person or entity proposing a project that may physically alter or modify the bed or banks of a perennially flowing stream, river, or spring, on either public or private land, to obtain a 310 permit from the local conservation district before commencing work. The State of Montana has delegated to conservation districts the authority to review, condition, approve, or deny 310 permit applications to ensure that projects are designed and implemented to prevent unreasonable damage to the stream, its banks, and adjacent or downstream landowners.

Conservation district water reservations authorized by the State of Montana constitute water rights held by a district for future agricultural irrigation projects and uses. The Board of Natural Resources and Conservation granted fourteen such reservations to conservation districts in the Yellowstone River basin in 1978, fifteen in the Upper Missouri River basin in 1992, and eleven in the Lower and Little Missouri River basins in 1994, with some districts holding reservations in more than one basin.

Funding for conservation district operations is derived, in part, from their statutory authority to levy a tax on real property within district boundaries. For specific conservation projects and educational activities, conservation districts also rely extensively on grants and financial assistance from state and federal agencies, including the United States Department of Agriculture Natural Resources Conservation Service and the Montana Department of Natural Resources and Conservation.

The information set forth herein is a general compilation of statutory and regulatory provisions pertaining to conservation districts operations and related programs. It is not exhaustive and does not constitute legal advice. Other state or federal laws, regulations, or local ordinances may apply depending on the particular facts and circumstances.

Disclaimer: The information herein is provided for general information purposes only. It should not be used as a substitute for a legal opinion from your county attorney or otherwise retained and qualified legal counsel. If you need advice regarding a specific legal situation, contact your legal counsel.

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Part 1. Code of Ethics

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 judges, legislators, judicial officers, 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; amd. Sec. 2, Ch. 440, L. 2023.

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 $100 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) "Judicial officer" includes all judicial officers, justices, district court judges, and judges of the judicial branch of state government.

(5) (a) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(b) The term does not include a district court or an entity under the control of the judicial branch of state government.

(6) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(7) "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.

(8) "Public employee" means:

(a) any temporary or permanent employee of the state, including an employee of the judicial branch;

(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.

(9) "Public information" has the meaning provided in 2-6-1002.

(10) (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.

(11) "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.

(12) (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.

(13) "State letterhead" means an electronic or written document that contains the great seal of the state provided for in 1-1-501 or purports to be a document from the state, a state agency, or a local government.

(14) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102 and all judicial officers, justices, district court judges, and judges of the judicial branch of state government.

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; amd. Sec. 1, Ch. 440, L. 2023; amd. Sec. 2, Ch. 559, L. 2023.

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 judicial officers, public officers, legislators, and public employees. A judicial officer, public officer, judge, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A judicial officer, public officer, judge, 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) judicial officers, state officers, judges, 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; amd. Sec. 3, Ch. 440, L. 2023; amd. Sec. 3, Ch. 559, L. 2023.

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

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

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 more than a 10% interest, or if the company is publicly traded, more than a 1% 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 more than a 10% interest. Real property may be described by general description.

(3) Disclosure of mutual funds under subsection (2) is not required.

(4) 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).

(5) 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.

(6) 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; amd. Sec. 1, Ch. 614, L. 2025.

Administrative Rules
ARM 44.10.621 Business disclosure.
ARM 44.11.221 Business interest disclosure.

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 (6), use public time, facilities, equipment, state letterhead, 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) A candidate, as defined in 13-1-101(10)(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, state letterhead, 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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; amd. Sec. 4, Ch. 559, L. 2023; amd. Sec. 1, Ch. 390, L. 2025.

Administrative Rules

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

Attorney General's Opinions

Right of Public Officer or Employee to Support or Oppose Political Candidate or Ballot Issue: Although 2-2-121 (revised by sec. 4, Ch. 559, L. 2023, similar provision in 2-2-122) sets forth rules of conduct for public officers and employees, it is not personal political speech that is prohibited, but rather the use of public time or resources in the presentation or furtherance of political speech. Thus, a public officer or employee may engage in political speech, including the support or opposition of a candidate or ballot issue, as long as the political speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds. 51 A.G. Op. 1 (2005).

2-2-122. Use of public resources for political purposes. (1) Except as provided in this section, a judicial officer, public officer, legislator, or public employee may not use or permit the use of public time, facilities, equipment, state letterhead, 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:

(a) authorized by law;

(b) properly incidental to another activity required or authorized by law, such as the function of a judicial officer, public officer, legislator, or public employee in the normal course of duties; or

(c) reasonably considered to be also available to the public.

(2) As used in subsection (1), "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:

(a) the activities of a judicial officer, public officer, legislator, or public employee related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(b) 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) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104, related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative, referendum, or constitutional amendment.

(3) It is a properly incidental activity for personal staff of legislative leadership who are exempt as provided in 2-18-104 to support nonelection political caucus activity involving legislative business in the normal course of duties as directed by legislative leadership.

(4) Subsection (1) is not intended to restrict the right of a judicial officer, public officer, legislator, or public employee to express personal political views.

(5) (a) 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 subsection (1) includes the chief's or officer's official highway patrol uniform.

(b) 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.

(6) A judicial officer, public officer, legislator, or public employee that violates this section may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

(7) Legislators are allowed limited use of public time, facilities, equipment, state letterhead, supplies, and personnel to:

(a) respond to inquiries or comments from the public, media, or government agencies;

(b) express opinions in any media or platform, including online and on social media; and

(c) publicly support or oppose statewide ballot issues or the nomination of a person to a public office.

History: En. Sec. 1, Ch. 559, L. 2023; amd. Sec. 8, Ch. 559, L. 2023.

Attorney General's Opinions

Right of Public Officer or Employee to Support or Oppose Political Candidate or Ballot Issue: Although 2-2-121 (revised by sec. 4, Ch. 559, L. 2023, similar provision in 2-2-122) sets forth rules of conduct for public officers and employees, it is not personal political speech that is prohibited, but rather the use of public time or resources in the presentation or furtherance of political speech. Thus, a public officer or employee may engage in political speech, including the support or opposition of a candidate or ballot issue, as long as the political speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds. 51 A.G. Op. 1 (2005).

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).

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).

2-2-136. Enforcement for judicial officers, state officers, legislators, and state employees -- referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a judicial officer, 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 judicial officer if a judicial act is involved in the complaint or 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(3)(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; amd. Sec. 4, Ch. 440, L. 2023; amd. Sec. 5, Ch. 559, L. 2023.

Cross-References
Commissioner of Political Practices, Title 13, ch. 37, part 1.

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

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.

(7) This section does not apply to allegations of a violation by a judicial officer, justice, district court judge, or judge under the judicial branch of state government.

History: En. Sec. 21, Ch. 562, L. 1995; amd. Sec. 5, Ch. 122, L. 2001; amd. Sec. 5, Ch. 440, L. 2023.

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.

Cross-References

Ethical principles relating to interest in contract, 2-2-105, 2-2-121.
Transfers and collusion prohibited, 18-4-141.

Attorney General's Opinions

Contracts — Definition: As used in this section, "contract" includes only those contracts to which public entities are parties and does not include contractual undertakings entered into between nonpublic entities or persons such as construction subcontracts. This is so even if a state or local official is a major shareholder of a corporation subcontracting with a prime contractor on a government project. 40 A.G. Op. 32 (1984).

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).

Definitions — Incorporation: Since the Legislature is presumed not to perform useless acts, the definitions of "be interested in" and "contract" contained in 2-2-201 are incorporated into and are applicable to 7-5-2106 and 7-5-4109, which relate to the same subject matter, conflicts of interest for local government officials. 40 A.G. Op. 28 (1983).

Commissioner Eligibility: A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority. 37 A.G. Op. 110 (1978).

County Property — Acquisition by Employees: The code of ethics (Title 2, ch. 2, part 1) prohibits a county employee from using confidential information acquired in the course of his official duties to further his economic interest, but it does not prohibit him from bidding on county property being sold at public auction or limit the employees' ability to purchase tax deeds. 37 A.G. Op. 104 (1978).

Scope of Prohibition: All state officers, employees, and members of government may enter into contracts with the state if the contract does not conflict with the prohibitions of this section or prohibitions of similar sections relating to contracts with a particular agency, board, or department. 34 A.G. Op. 46 (1972).

General Prohibition — Not Applicable When Specific Prohibition Applies: This section is a general statute applying to contracting in all levels of government except when a special statute has been enacted, such as that regulating state procurement in 18-4-141. 34 A.G. Op. 36 (1972).

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.

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).

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;

(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; or

(h) a board, bureau, or commission of a county with a population of less than 10,000 people, if all the board, bureau, or commission members, with the exception of any member 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 board member.

(3) Prior to the appointment of a person referred to in subsection (2)(b), (2)(g), or (2)(h), 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; amd. Sec. 1, Ch. 184, L. 2023.

Cross-References
Affinity, 1-1-219.
Consanguinity, 72-11-102 through 72-11-104.

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

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, make a decision on development applications, 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, the approval of a development application, or the equivalent or denial of any of these.

(3) "Development application" means a formal request submitted to a local government entity to obtain approval for a development proposal pursuant to Title 76, chapter 25, part 3 or 4.

(4) "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; amd. Sec. 1, Ch. 555, L. 2025.

Attorney General's Opinions

Municipal Entities Subject to Right of Public Participation — Limit on Public Comment: Any municipal entity, including an advisory board, commission, and committee of a City Council, is subject to the right of the public to participate in any action that is of significant interest to the public. However, those municipal entities need not permit public comment on matters that are not of significant interest to the public. 51 A.G. Op. 12 (2005).

2-3-103. Public participation -- governor to ensure guidelines adopted -- procedures for publishing notice. (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.

(b) The agency shall publish an agenda for a meeting, as defined in 2-3-202, as follows:

(i) if a newspaper of general circulation in the county where the agency is located publishes electronic notices and links to meeting agendas free of charge to the agency on the newspaper's website, the agency shall provide the notice and agenda to the newspaper to post on the newspaper's website;

(ii) if the agency does not have an option to post notices and links to meeting agendas free of charge, the agency shall provide adequate notice of a meeting by doing at least one of the following:

(A) posting a link to the meeting agenda on the agency's primary website; or

(B) posting the agenda on the social media site of the agency.

(c) The agenda 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.

(d) Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(e) 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; amd. Sec. 1, Ch. 396, L. 2023.

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.
Adoption of rules, 2-4-302.
Publication of rules — availability, 2-4-312.

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).

Public Notice Required for City Council Meetings — Requirement for Agenda Item for Public Comment on Nonagenda Matters Directed Only to Matters of Significant Public Interest but Applicable to Formal and Informal Council Sessions: Public notice is required for any meeting of a City Council. The mandate imposed upon a City Council to include an agenda item for public comment on nonagenda matters applies only to the extent that the public comments are directed to matters of significant interest to the public, but the City Council is not required to take public comments on matters that are not of significant interest to the public. The mandate applies both to formal City Council meetings and to informal City Council work sessions when no action may be taken. 51 A.G. Op. 12 (2005).

Right of Public to Comment on Nonagenda City Council Items Extended to Matters Involving Individual Privacy — Right of Presiding Officer to Close City Council Meeting to Protect Individual Privacy: The right of the public to comment at a City Council meeting on nonagenda items extends to matters that may involve an interest in individual privacy. However, the presiding office of the City Council retains the power to close a City Council meeting to the public if the presiding officer determines that the interest of individual privacy clearly outweighs the public's right to know. 51 A.G. Op. 12 (2005).

Applicability of Open Meeting and Public Participation Laws to County Commission Meetings — Notice Required in Matters of Significant Public Interest: The gathering of a quorum of County Commissioners to discuss, either among themselves or with members of the public, issues over which the County Commission has authority is a meeting subject to open meeting laws. Meetings involving the consideration of matters of significant public interest, meaning decisions involving more than a ministerial act requiring no exercise of judgment, are subject to public participation mandates, including notice requirements and the opportunity for public participation in the decisionmaking process. Thus, a County Commission that established the hours of 9:30 a.m. to 5 p.m., Monday through Friday, as its regular meeting time for public notice purposes, did not comply with Montana's constitutional and statutory public participation provisions. 47 A.G. Op. 13 (1998). See also 42 A.G. Op. 51 (1988).

2-3-104. Requirements for compliance with notice provisions. An agency is 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) an agency adopts and implements the public participation plan required in 76-25-106 for the purposes of agency actions taken in accordance with Title 76, chapter 25;

(4) 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

(5) 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: 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); amd. Sec. 2, Ch. 555, L. 2025.

Cross-References
Montana Administrative Procedure Act — proceedings, 2-4-302, 2-4-306, 2-4-601.
Publication and content of local government notices, 7-1-2121.

Attorney General's Opinions

Constitutional Mandate: In the context of rulemaking, the Montana Administrative Procedure Act fulfills the mandate of Art. II, sec. 8, Mont. Const., requiring reasonable opportunity for citizen participation in agency operation, by providing notice and hearing. 38 A.G. Op. 69 (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.

Cross-References
Affidavits — generally, Title 26, ch. 1, part 10.
Affidavit defined, 26-1-1001.

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.
Agency to accept public comment electronically, 2-3-301.

Attorney General's Opinions

Applicability of Open Meeting and Public Participation Laws to County Commission Meetings — Notice Required in Matters of Significant Public Interest: The gathering of a quorum of County Commissioners to discuss, either among themselves or with members of the public, issues over which the County Commission has authority is a meeting subject to open meeting laws. Meetings involving the consideration of matters of significant public interest, meaning decisions involving more than a ministerial act requiring no exercise of judgment, are subject to public participation mandates, including notice requirements and the opportunity for public participation in the decisionmaking process. Thus, a County Commission that established the hours of 9:30 a.m. to 5 p.m., Monday through Friday, as its regular meeting time for public notice purposes, did not comply with Montana's constitutional and statutory public participation provisions. 47 A.G. Op. 13 (1998). See also 42 A.G. Op. 51 (1988).

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

Part Attorney General's Opinions

Tax Appeal Board Deliberations Regarding Application for Reduction in Valuation — Open to Public: The deliberations of a county tax appeal board regarding an application for a reduction in property valuation must be open to the public unless the presiding officer determines the discussion relates to a matter of individual privacy and the demands of individual privacy clearly exceed the merits of public disclosure. 42 A.G. Op. 61 (1988).

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.

Cross-References
Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

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.
Deliberations of Medical Legal Panel to be secret, 27-6-603.
Criminal penalty for closed meeting — official misconduct, 45-7-401

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).

Right of Public to Comment on Nonagenda City Council Items Extended to Matters Involving Individual Privacy — Right of Presiding Officer to Close City Council Meeting to Protect Individual Privacy: The right of the public to comment at a City Council meeting on nonagenda items extends to matters that may involve an interest in individual privacy. However, the presiding office of the City Council retains the power to close a City Council meeting to the public if the presiding officer determines that the interest of individual privacy clearly outweighs the public's right to know. 51 A.G. Op. 12 (2005).

Applicability of Open Meeting and Public Participation Laws to County Commission Meetings — Notice Required in Matters of Significant Public Interest: The gathering of a quorum of County Commissioners to discuss, either among themselves or with members of the public, issues over which the County Commission has authority is a meeting subject to open meeting laws. Meetings involving the consideration of matters of significant public interest, meaning decisions involving more than a ministerial act requiring no exercise of judgment, are subject to public participation mandates, including notice requirements and the opportunity for public participation in the decisionmaking process. Thus, a County Commission that established the hours of 9:30 a.m. to 5 p.m., Monday through Friday, as its regular meeting time for public notice purposes, did not comply with Montana's constitutional and statutory public participation provisions. 47 A.G. Op. 13 (1998). See also 42 A.G. Op. 51 (1988).

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

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.

2-3-214. Recording of meetings for certain boards. (1) Except as provided in 2-3-203 and subsection (6) of this section, the following boards shall record their public meetings in an audio and video 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;

(e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution;

(f) except as provided in subsection (7)(a), the governing board of a county provided for in Title 7, chapter 1, part 21;

(g) except as provided in subsection (7)(b), the governing board of a first-class and second-class city provided for in Title 7, chapter 1, part 41;

(h) a first-class or second-class school district board of trustees provided for in Article X, section 8, of the Montana constitution, 20-6-201, and 20-6-301; and

(i) a local board of health provided for in Title 50, chapter 2, part 1.

(2) (a) The boards listed in subsections (1)(a) through (1)(e) shall make the audio and video 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 audio and video content on the respective board's website.

(b) The boards listed in subsections (1)(f) through (1)(i) shall make the audio and video recordings publicly available within 5 business days after the meeting with a link to the recording on the respective board's website.

(c) The boards listed in subsection (7) shall make the audio recording publicly available within 14 business days after the meeting with a link to the recording on the respective board's website.

(d) If a board listed in subsections (1)(f) through (1)(i) and (7) does not maintain a website, it shall maintain a social media page and provide a link to the recording on the social media page.

(e) 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.

(3) For the boards listed in subsections (1)(f) through (1)(i) that maintain minutes as required by 2-3-212, the audio and video recordings created pursuant to this section are not required to be the official record of the meeting. If a recording is not designated as the official record, the recording may be destroyed after being retained online for 1 year and is not subject to the requirements of Title 2, chapter 6, for public information requests.

(4) A board is not required to disrupt or reschedule a meeting if there is a technological failure of the meeting recording. If the recording is not able to be made available online, the board shall prominently post a notice in the same manner as a notice of a public meeting and shall post a notice at all locations where the meeting recording links are available. The notice must explain the reason the meeting was not recorded and describe the steps taken to remedy the failure prior to the next meeting.

(5) The requirements of this section apply only when a board is acting on a matter over which the board has supervision, control, jurisdiction, or advisory power at a public meeting as defined in 2-3-202 that has been publicly noticed as required by 2-3-103.

(6) The requirements of this section do not apply to a board listed in subsection (1)(f) when a quorum is incidentally established as described in 7-5-2122(4) and (5) solely on the basis of sharing a common office space.

(7) The following boards must meet the requirements of this section, except that meetings may be recorded, retained, and made available in audio format only:

(a) the governing board of a county with a population of less than 4,500; and

(b) the governing board of a third-class city or a town with a population greater than 300.

(8) Expenditures by a school district on staff, consultants, equipment, software licenses, storage, or security made to fulfill the requirements of this section qualify as a school facility project under 20-9-525.

History: En. Sec. 1, Ch. 133, L. 2015; amd. Sec. 1, Ch. 741, L. 2023; amd. Sec. 1, Ch. 271, L. 2025.

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.

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 electronically.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media the 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. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic comments pursuant to subsection (1) shall retain the electronic comments 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; amd. Sec. 2, Ch. 695, L. 2025.

CHAPTER 6. PUBLIC RECORDS

Part 10. General Provisions

Part Cross-References

Public records — property of state, 2-6-1013.

Reporting to Legislative Finance Committee, 5-12-209.

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.

History: En. Sec. 1, Ch. 348, L. 2015.

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.

Attorney General's Opinions

Lists of Destroyed Personal Property Not Subject to Disclosure: Lists of destroyed personal property, generated by an individual for no governmental function or purpose and not as the result of the fulfillment of a public employee's duty or for documenting government business, do not constitute public writings or records subject to disclosure laws. 45 A.G. Op. 17 (1993).

Buyer's Affidavit and Certification Subject to Public Disclosure: The buyer's affidavit and certification submitted to the Board of Housing pursuant to the mortgage credit certificate program is subject to public disclosure. 43 A.G. Op. 25 (1989).

Property Record Cards — Public Inspection: The Department of Revenue may not withhold property record cards from public inspection. Although property record cards might not be "public writings", 2-6-102 (now repealed, similar provision in 2-6-1003), concerning "public writings", is not controlling with respect to questions of public access. 39 A.G. Op. 17 (1981).

2-6-1003. Access to public information -- safety and security exceptions -- Montana historical society exception. (1) Except as provided in subsections (2) through (4), 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. On the expiration of the restriction, the private records must be made accessible to the public.

(4) Except as provided in 87-1-213, the department of fish, wildlife, and parks, and any party with whom the department has shared the information under a data-sharing agreement pursuant to 87-1-213, may not release wildlife location data or telemetry frequencies of hunted or trapped animals.

(5) A public agency may not refuse to disclose public information because the requested public information is part of litigation or may be part of litigation unless the information is protected from disclosure under another applicable law.

History: En. Sec. 3, Ch. 348, L. 2015; amd. Sec. 1, Ch. 775, L. 2023; amd. Sec. 2, Ch. 433, L. 2025.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Minutes of meetings — available subject to right of individual privacy, 2-3-212.
Settlement of claim against government — governmental portion open to public inspection, 2-9-303, 2-9-304.
Office hours, 2-16-117.
Election materials not public until canvassed, 13-15-301.

Ownership of public obligations — no inspection, 17-5-1106.
Records of Medical Legal Panel confidential, 27-6-703.
Attachment — filing not public until writ returned, 27-18-111.

Administrative Rules

ARM 44.2.204 Access to documents and fees for copies.

Attorney General's Opinions

District Court Clerk Not Authorized to Charge Nonparty State Agency for Copies and Certification of Public Records: Access to and fees for copying public court records are not absolute and are controlled by state law. Fees allowed by law are enumerated in 25-1-201, and the collection of those fees is mandatory. Fees for preparing copies and for certification of documents are also specified in that section. Section 25-10-405 clarifies that fees are collectible from state agencies that are a party to an action but has no effect in cases in which the agency is not a litigant. In those cases, the rule in 7-4-2516 applies, exempting agencies of state and county government from paying official fees. Therefore, a Clerk of District Court may not charge a nonparty state agency for copies and certification of public District Court records. 47 A.G. Op. 3 (1997).

Lists of Destroyed Personal Property Not Subject to Disclosure: Lists of destroyed personal property, generated by an individual for no governmental function or purpose and not as the result of the fulfillment of a public employee's duty or for documenting government business, do not constitute public writings or records subject to disclosure laws. 45 A.G. Op. 17 (1993).

Property Record Cards — Public Inspection: The Department of Revenue may not withhold property record cards from public inspection. Although property record cards might not be "public writings", 2-6-102(now repealed, similar provision in 2-6-1003) concerning "public writings", is not controlling with respect to questions of public access. 39 A.G. Op. 17 (1981).

Public's Right to Know: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

Right to Know: The Board of Nurses (now Board of Nursing) must issue lists of registered nurses and licensed practical nurses to members of the public who wish to purchase them. 35 A.G. Op. 27 (1973).

2-6-1006. (Temporary) Public information requests — fees. (1) (a) 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.

(b) (i) All public agencies are governed by this subsection (1).

(ii) A public agency that is not an executive branch agency must meet the requirements of subsection (2) when responding to a public information request.

(iii) Except as provided in subsection (1)(b)(iv), all executive branch agencies must meet the requirements of subsection (3) when responding to a public information request.

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

(c) A public agency other than the office of the secretary of state may charge a fee pursuant to subsections (1)(e) and (5) and this subsection (1)(c). The fee must be documented. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(d) 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.

(e) 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.

(2) Upon receiving a request for public information, a public agency that is not an executive branch 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 as well as any fees that may be charged.

(3) (a) (i) An executive branch agency shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential, privileged, or otherwise protected information that is not subject to public disclosure under applicable law and information withheld from public scrutiny as provided in 2-6-1003, the executive branch agency shall respond by:

(A) making the public information maintained by the executive branch agency available in a timely manner for inspection and copying by the requesting person;

(B) providing a specified public record to the requesting person within 5 working days of the executive branch agency's acknowledgment of receipt of the request if the request is for a single, specific, clearly identifiable, and readily available public record; or

(C) responding as provided in subsection (3)(b).

(ii) Subsection (3)(a)(i)(B) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations.

(b) (i) If a request seeks public information that cannot be readily identified and gathered, the agency shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within either:

(A) 90 days of the public agency's acknowledgment of the request; or

(B) 6 months of the public agency's acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.

(ii) If an executive branch agency requires a requesting person to pay an estimated fee, the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.

(c) An executive branch agency may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each executive branch agency must have a designated contact for public information requests posted on its website.

(e) By 1 month after this section becomes applicable to an executive branch agency, an executive branch agency that is subject to this subsection (3) shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. Requests and responses must be available for 2 years from the date of the request. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (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 a 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.

(5) A public agency may charge the following fees:

(a) fees for making public information maintained by the public agency available for inspection and copying by the requesting person at the public agency. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(a)(i) through (5)(a)(v). These fees may include but are not limited to:

(i) fees not exceeding $25 an hour for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(a)(i);

(iii) the cost of providing the public information to the requester, including but not limited to copying and media costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(b)(i) through (5)(b)(v). These fees may include but are not limited to:

(i) fees not exceeding $25 an hour for gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(b)(i);

(iii) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(c) fees for fulfilling a request for public information that is not a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(c)(i) through (5)(c)(vi). After the first hour of service, which is free after the filing fee in subsection (5)(c)(i) is paid, these fees may include but are not limited to:

(i) a filing fee not to exceed $5;

(ii) fees not exceeding $25 an hour for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(iii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(c)(ii);

(iv) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(v) a convenience fee as provided in 2-17-1102, if applicable; and

(vi) other reasonable costs directly incurred by the public agency. (Terminates June 30, 2026—sec. 6, Ch. 479, L. 2025.)

2-6-1006. (Effective July 1, 2026) Public information requests — fees. (1) (a) 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.

(b) (i) All public agencies are governed by this subsection (1).

(ii) A local government must meet the requirements of subsection (2) when responding to a public information request. A local government is not subject to subsection (3).

(iii) Except as provided in subsection (1)(b)(iv), a public agency that is not a local government must meet the requirements of subsection (3) when responding to a public information request.

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

(c) A public agency other than the office of the secretary of state may charge a fee pursuant to subsections (1)(e) and (5) and this subsection (1)(c). The fee must be documented. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(d) 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.

(e) 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.

(2) Upon receiving a request for public information, a local government shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the local government 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 as well as any fees that may be charged.

(3) (a) (i) A public agency that is not a local government shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential, privileged, or otherwise protected information that is not subject to public disclosure under applicable law and information withheld from public scrutiny as provided in 2-6-1003, a public agency that is not a local government shall respond by:

(A) making the public information maintained by the agency available in a timely manner for inspection and copying by the requesting person;

(B) providing a specified public record to the requesting person within 5 working days of the agency's acknowledgment of receipt of the request if the request is for a single, specific, clearly identifiable, and readily available public record; or

(C) responding as provided in subsection (3)(b).

(ii) Subsection (3)(a)(i)(B) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations.

(b) (i) If a request seeks public information that cannot be readily identified and gathered, a public agency that is not a local government shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within either:

(A) 90 days of the agency's acknowledgment of the request; or

(B) 6 months of the agency's acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.

(ii) If an agency requires a requesting person to pay an estimated fee, the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.

(c) A public agency that is not a local government may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's

request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each public agency that is not a local government must have a designated contact for public information requests posted on its website.

(e) By November 1, 2026, a public agency that is not a local government shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. Requests and responses must be available for 2 years from the date of the request. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (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 a 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.

(5) A public agency may charge the following fees:

(a) fees for making public information maintained by the public agency available for inspection and copying by the requesting person at the public agency. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(a)(i) through (5)(a)(v). These fees may include but are not limited to:

(i) fees not exceeding $25 an hour for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(a)(i);

(iii) the cost of providing the public information to the requester, including but not limited to copying and media costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(b)(i) through (5)(b)(v). These fees may include but are not limited to:

(i) fees not exceeding $25 an hour for gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(b)(i);

(iii) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(c) fees for fulfilling a request for public information that is not a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections

(5)(c)(i) through (5)(c)(vi). After the first hour of service, which is free after the filing fee in subsection (5)(c)(i) is paid, these fees may include but are not limited to:

(i) a filing fee not to exceed $5;

(ii) fees not exceeding $25 an hour for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(iii) the actual cost to fulfill the request, subject to the limit provided in subsection (5)(c)(ii);

(iv) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(v) a convenience fee as provided in 2-17-1102, if applicable; and

(vi) other reasonable costs directly incurred by the public agency.

History: En. Sec. 4, Ch. 348, L. 2015; amd. Sec. 1, Ch. 439, L. 2023; amd. Sec. 1, Ch. 479, L. 2025, Sec. 2, Ch. 479, L. 2025.

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.

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 Montana 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; amd. Sec. 1, Ch. 142, L. 2021.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.

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. (Temporary) Written notice of denial — failure to meet response deadline — 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) If a person who makes an information request to an executive branch agency does not receive a response from the agency as required in 2-6-1006(3), the person may file a complaint in district court.

(4) 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.

2-6-1009. (Effective July 1, 2026) Written notice of denial — failure to meet response deadline — 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) If a person who makes an information request to a public agency that is not a local government does not receive a response from the agency as required in 2-6-1006(3), the person may file a complaint in district court.

(4) 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; amd. Sec. 2, Ch. 439, L. 2023; amd. Sec. 3, Ch. 479, L. 2025.

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
Custody and preservation of records by Secretary of State, 2-15-406.
Preservation of records — state archives, Title 22, ch. 3, part 2.

Administrative Rules
ARM 44.14.106 Delegation authority for disposal of public records.

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;

(e) persons who own property in a county water and/or sewer district provided for in 7-13-2275(4)(d); or

(f) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing 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; amd. Sec. 1, Ch. 457, L. 2021.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Misdemeanor — no penalty specified, 46-18-212.

Administrative Rules

ARM 2.43.1406 through 2.43.1408 Mailings to retirement system participants on behalf of nonprofit organizations.

Attorney General's Opinions

Prohibition Against Distribution of Mailing Lists Applicable Both to Lists of Individuals and Corporations: The prohibition against the distribution of mailing lists by state agencies applies to mailing lists of both individual persons and corporations. 43 A.G. Op. 73 (1990), overruling in part a contrary holding in 38 A.G. Op. 59 (1979).

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.

2-6-1112. 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.

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.

Part 12. Local Government Records

Part Administrative Rules

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

2-6-1205. Disposal of local government public records prohibited prior to offering -- central registry -- notification. (1) A local government public record that is more than 50 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 30 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.

(4) A local government entity shall ensure that any record that contains confidential information or is otherwise protected from disclosure is not added to the central registry under subsection (3).

History: En. Sec. 24, Ch. 348, L. 2015; amd. Sec. 2, Ch. 678, L. 2023.

Part 15. State Agency Protection of Personal Information

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) "Chief information security officer" means an employee at the department of administration designated by the chief information officer who is responsible for protecting the state's information assets and citizens' data by:

(a) advising and overseeing information security strategy and programs for executive branch state agencies without elected officials;

(b) advising and consulting information security strategy and programs for executive branch state agencies with elected officials and the legislative and judicial branches; and

(c) advising information security strategy and programs for city, county, consolidated city-county, and local governments and for school districts, other political subdivisions, or tribal governments.

(3) "Individual" means a human being.

(4) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(5) (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 Commonwealth of the Northern Mariana Islands, 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.

(6) "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.

(7) "Security incident" means an occurrence that:

(a) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits; or

(b) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

(8) (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.

(9) "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; amd. Sec. 2, Ch. 227, L. 2023; amd. Sec. 1, Ch. 395, L. 2025.

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 governor, 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; amd. Sec. 3, Ch. 227, L. 2023.

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 security 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; amd. Sec. 4, Ch. 227, L. 2023.

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.

Attorney General's Opinions

County Water District Subject to Single Audit Act: A county water district is a local government entity and is thus subject to the requirements of the State of Montana Single Audit Act, Title 2, ch. 7, part 5. The requirement applies whether or not the county water district has accepted local, state, or federal funds during the year. 50 A.G. Op. 3 (2003).

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.

Cross-References

Constitutional mandate for strict financial accountability of local governments, Art. VIII, sec. 12, Mont. Const.

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.

(i) The financial report must cover the preceding fiscal year and be in a form prescribed by the department or be in an alternative form acceptable to the department as provided in subsection (1)(a)(ii). The completed report must be submitted to the department for review within 6 months of the end of the reporting period. The department may grant a 3-month extension for the submittal of an audit in lieu of a financial report.

(ii) An alternative format of a financial report acceptable to the department may be used by local government entities with a population of 10,000 or less as reported in the most recent decennial survey issued by the United States census bureau and that meets the requirements outlined in department rule.

(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 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. The audit may cover the entity's preceding 2 fiscal years and 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; amd. Sec. 1, Ch. 373, L. 2023.

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.

Administrative Rules

Title 2, chapter 4, subchapter 4, ARM Administrative financial services — Single Audit Act.
ARM 2.4.404 Penalty for failing to pay filing fee within 60 days of due date.

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.

Administrative Rules

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

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.

Cross-References
Licensure of accountants, 2-15-1756; Title 37, ch. 50.

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

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.

2-7-511. 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.

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.

Administrative Rules
ARM 2.4.402 Report filing fee.
ARM 2.4.404 Penalty for failing to pay filing fee within 60 days of due date.

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 make 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) 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.

(4) 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; amd. Sec. 2, Ch. 373, L. 2023.

Administrative Rules

ARM 2.4.403 Penalties for failing to file reports within prescribed time without approved extension.
ARM 2.4.404 Penalty for failing to pay filing fee within 60 days of due date.

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.

2-7-521. 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.

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

Chapter Cross-References

Crime victim assistance by government — no cause of action against government for damages, 46-24-105.

Part 1. Liability Exposure

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.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

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 governmental 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.

Cross-References
Requisites for validity of rule, 2-4-305.

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.

Cross-References
Exemplary damages, 27-1-221.

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.

2-9-111. 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; o

(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.

Cross-References

Immunity, Art. V, sec. 8, Mont. Const.

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.

Cross-References

Special sessions — call by members, Art. V, sec. 6, Mont. Const.; 5-2-103.
Veto power, Art. VI, sec. 10, Mont. Const.
Governor's call for special sessions of Legislature, Art. VI, sec. 11, Mont. Const.; 5-2-103.
Action by Governor on bills, Title 5, ch. 4, part 3.

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

Part Administrative Rules

Title 2, chapter 6, ARM Risk Management and Tort Defense Division.

Part Attorney General's Opinions

Allowable Insureds — Not Negotiated Employee Benefit: It is apparent that the insurance authorized by this part is for the political subdivision itself and is not provided to the subdivision's employees as a negotiated benefit. The tax allowed by 2-9-212 may not be used for health and disability insurance for school district employees. The holding in 37 A.G. Op. 109 (1980) is not to the contrary. 39 A.G. Op. 56 (1982).

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.

Cross-References

Unified investment fund — local governments may use, 17-6-204, 17-6-205.

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). For the purposes of this section, "political

subdivision" includes a community college district created prior to January 1, 2021.

(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; amd. Sec. 3, Ch. 351, L. 2021.

Cross-References
Property tax limitation, Title 15, ch. 10, part 4.

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.

Cross-References
Statutes of limitations, Title 27, ch. 2.

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) (a) 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.

(b) Unless the state or its entities pay nothing to resolve a claim, the compromise or settlement agreement must include a description of the alleged acts, omissions, or other basis of liability at issue.

(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; amd. Sec. 5, Ch. 511, L. 2021.

Cross-References
Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.

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.

Cross-References
Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.
Principal's responsibility for agent's negligence, 28-10-602.
Indemnity, Title 28, ch. 11, part 3.

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 government 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.

Cross-References
Damages and costs awarded against government officer to be recovered from governing entity employing officer, 27-26-403

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.

2-9-311. 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.

Cross-References
Venue of actions against state, county, and political subdivisions, 25-2-126.

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.

Cross-References
Amount of interest payable on judgments, 25-9-205.
Interest on recovery of damages, 27-1-211 through 27-1-214.

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.

Part 6. Bonds of State Officers and Employees

Part Cross-References
Guaranty, indemnity, and suretyship, Title 28, ch. 11.
Suretyship, Title 33, ch. 26.

2-9-601. Definition. As used in this part, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges, or members and employees of the legislature.

History: En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-105(part).

2-9-602. Officers and employees to be bonded -- coverage, form, amount. (1) All state officers and employees shall be bonded.

(2) A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the department of administration, subject to the approval of the attorney general.

(3) Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or post auditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

History: (1), (2)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (3)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part).

CHAPTER 16. PUBLIC OFFICERS

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

Part 2. Accession to Office

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.

Cross-References
Oath of office, Art. III, sec. 3, Mont. Const.
Who may administer oaths, 1-6-101, 2-16-116.
Vacancy in office created — failure to file official oath within time prescribed, 2-16-501.

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.

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Calculation of Term Limits — "Current Term" Defined: Pursuant to 13-10-201, the phrase "current term" used in Art. IV, sec. 8, Mont. Const., means the term served after regular election to a full term of office. Under this definition, a candidate may file for office if, at the time the candidate begins to serve in, rather than file for, that office, the candidate will have had an 8-year break in service over a 16-year period. 54 A.G. Op. 4 (2012).

CHAPTER 18. STATE EMPLOYEE CLASSIFICATION, COMPENSATION, & 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.

(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, by each director appointed by the governor as provided in 2-15-111(1), or by each division administrator, or equivalent, appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution.

(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 in which 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 resources as defined in 2-17-506;

(C) employees who are medical professionals involved in medical evaluations and treatment;

(D) employees who are engaged in providing services related to economic development outside the state and whose work duties require the employees to reside out of state; or

(E) employees who are associates or fellows of the casualty actuarial society or society of actuaries.

(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; amd. Sec. 1, Ch. 563, L. 2021; amd. Sec. 23, Ch. 365, L. 2023; amd. Sec. 1, Ch. 683, L. 2023; amd. Sec. 1, Ch. 8, L. 2025.

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, the following provisions apply:

(a) Lodging must be authorized at the actual cost of lodging and taxes on the allowable cost of lodging.

(b) Except as provided in subsection (9), meals must be authorized at 70% of the standard federal rate of reimbursement for breakfast, lunch, and dinner in Montana established by the United States general services administration in accordance with the federal travel regulation.

(2) Except as provided in subsection (3), for travel outside the state of Montana including foreign travel, 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 (9), 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 (2)(b); and

(b) lodging when the actual cost exceeds the maximum established in subsection (2)(a).

(4) When other than commercial, nonreceiptable 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.

(5) 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.

(6) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall establish policies necessary to effectively administer this section for state government.

(8) All commercial air travel must be by the least expensive class service available.

(9) 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.

(10) For the purposes of implementing subsection (9), 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.

(11) Except for claims made pursuant to subsection (4), all claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

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; amd. Sec. 3, Ch. 87, L. 2023; amd. Sec. 2, Ch. 21, L. 2025.

Cross-References

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

State agencies to account for in-state lodging expenditures — allocation of lodging facility use tax to state general fund, 15-65-131.

Government officer as witness — no per diem for criminal proceeding, 26-2-501.

2-18-502. Computation of meal allowance. (1) Except as provided in 5-2-302 and subsections (2) and (4) of this section, 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 non-night-shift hours:

(i) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(ii) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(iii) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight;

(b) for night-shift hours:

(i) for the evening meal allowance, between the hours of 12:01 p.m. and 10 p.m.;

(ii) for the midnight meal allowance, between the hours of 10:01 p.m. and 3 a.m.; and

(iii) for the early morning meal allowance, between the hours of 3:01 a.m. and 12 noon.

(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 is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, or council, regardless of proximity of the meeting place to the individual's residence or headquarters.

(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; amd. Sec. 1, Ch. 159, L. 2025; amd. Sec. 1, Ch. 721, L. 2025.

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

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.

(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; amd. Sec. 1, Ch. 60, L. 2025.

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

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. 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) "Floating holiday" means an annual scheduled day off with pay as provided for in 2-18-603 for an employee of an agency specified in 2-18-101(1) or for an employee of an entity of the legislative branch consolidated as provided for in 5-2-504.

(8) "Full-time employee" means an employee who normally works 40 hours a week.

(9) "Holiday" means:

(a) for employees of an agency specified in 2-18-101(1) and employees of an entity of the legislative branch consolidated, as provided in 5-2-504, a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216(1)(a) through (1)(k), except Sundays; or

(b) for all other employees, 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.

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; amd. Sec. 4, Ch. 87, L. 2023; amd. Sec. 1, Ch. 67, L. 2025.

Attorney General's Opinions

Public Employee Supplementing Workers' Compensation With Sick Leave Classified Under Leave-With-Pay Status — Accrual of Vacation and Sick Leave Credits on Prorated Basis: Employees who supplement their workers' compensation benefits with accrued sick leave are classified under leave-with-pay status as to the sick leave hours converted to pay. As such, the employees are entitled to accrue vacation and sick leave credits for the converted hours on a prorated basis. 56 A.G. Op. 1 (2016).

2-18-603. Holidays -- observance when falling on employee's day off -- floating holiday. (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 or student intern may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

(3) According to policies adopted by the department of administration:

(a) each full-time employee of an agency specified in 2-18-101(1) is entitled to one floating holiday each calendar year;

(b) each part-time employee of an agency specified in 2-18-101(1) is entitled to one floating holiday each calendar year that must be calculated proportionately to the floating holiday allowed to a full-time employee;

(c) unused floating holiday leave expires at the end of each calendar year, does not accrue, and is not paid out to employees on termination of employment; and

(d) a short-term worker or student intern may not receive a floating holiday.

(4) According to policies adopted by the legislative branch:

(a) each full-time employee of an entity of the legislative branch consolidated, as provided in 5-2-504, is entitled to one floating holiday each calendar year;

(b) each part-time employee of an entity of the legislative branch consolidated, as provided in 5-2-504, is entitled to one floating holiday each calendar year that must be calculated proportionately to the floating holiday allowed to a full-time employee;

(c) unused floating holiday leave expires at the end of each calendar year, does not accrue, and is not paid out to employees on termination of employment; and

(d) a short-term worker or student intern may not receive a floating holiday.

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; amd. Sec. 5, Ch. 87, L. 2023; amd. Sec. 2, Ch. 67, L. 2025.

Cross-References
Legal holidays, 1-1-216.

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.

Attorney General's Opinions

Department Rules Upheld — Leave Time — Agency Interpretation Entitled to Substantial Weight: The Department of Administration's comprehensive set of rules, adopted under this section, explicitly recognizes that vacation and sick leave credits are accrued on an hourly basis. In construing statutes, the interpretation of the

administrative body is entitled to substantial weight. Here, agency's interpretation was applied to public employees at the local level. 39 A.G. Op. 15 (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.

Cross-References

Maternity leave and job reinstatement, 49-2-310, 49-2-311.

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.

Cross-References

Job-sharing positions, 2-18-107.

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.

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).

2-18-614. 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. (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 nonrefundable and is not eligible for cash compensation upon termination.

(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.

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.

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).

Beginning of Fiscal Year — Computation for Compensation: Sick or annual leave for employees terminated as laid off on June 30, 1979, should be computed by reference to the pay matrix in effect on that date. 38 A.G. Op. 70 (1980).

County Employee Elected to Public Office: A county employee who is elected or appointed to a public office of the state, county, or city thereby terminates his employment and is entitled to receive vacation and sick leave benefits accumulated during his employment, unless he falls within the mandatory leave provision of 2-18-620 (now repealed). 38 A.G. Op. 12 (1979).

County Superintendent of Schools: An elected County Superintendent of Schools is not an "employee" for the purposes of this part. 37 A.G. Op. 4 (1977).

2-18-618. 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.

Cross-References
Job-sharing positions, 2-18-107.

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.

Cross-References
Juries and jurors, Title 3, ch. 15.
Jury duty — who may be excused, 3-15-313.
Subpoenas and witnesses, Title 26, ch. 2.

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; 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.

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.

2-18-627. 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.

TITLE 7. LOCAL GOVERNMENT

Title Cross-References

Local government, Art. XI, Mont. Const.

CHAPTER 1. GENERAL PROVISIONS

Part 21. Counties

Part Cross-References

County boundary change, Art. XI, sec. 2, Mont. Const.

County boundary descriptions, see anno. vol. I.

Creation, alteration, and abandonment of counties, Title 7, ch. 2, parts 1 and 21, 22, and 24 through 27.

Operational status of self-government city-county consolidated local governments, 7-5-201.

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

(1) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), 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; amd. Sec. 2, Ch. 408, L. 2021.

Cross-References
Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.
County control of litter, 7-5-2109.
County authority to establish speed limits, 7-14-2113.
Restriction on local government regulation of firearms, 45-8-351.

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

(1) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), 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; amd. Sec. 2, Ch. 408, L. 2021.

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.

7-4-2203. 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.

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

H*istory: 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.*

CHAPTER 5. GENERAL OPERATION AND CONDUCT OF BUSINESS

Part 1. Local Government Ordinances, Resolutions, Initiatives & 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.
Local-option marijuana excise tax, 16-12-309 through 16-12-312 and 16-12-317.
County ordinance restricting phosphorus sales, Title 75, ch. 7, part 4.

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:

(a) contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances;

(b) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(c) deny a customer of a private business the ability to access goods or services provided by the private business; or

(d) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(b) and (2)(c):

(i) allow for the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided in subsection (2)(c) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

(4) The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to:

(a) the adoption of an ordinance allowed in 75-7-411;

(b) the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210; or

(c) the enforcement of an ordinance pursuant to 76-2-308(2).

(5) 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.

(6) 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.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit and that has an established physical location within the boundaries of the county or municipality. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.

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; amd. Sec. 4, Ch. 408, L. 2021; amd. Sec. 1, Ch. 185, L. 2023.

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.

7-5-121. Resolution requirements. (1) All resolutions must be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(a) and (2)(b):

(i) allow for the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

(4) The prohibitions provided for in subsection (2) do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.

(5) Resolutions may be submitted and adopted at a single meeting of the governing body.

(6) After passage and approval, all resolutions must be entered into the minutes and signed by the chairperson of the governing body.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit and that has an established physical location within the boundaries of the county or municipality. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4); amd. Sec. 5, Ch. 408, L. 2021; amd. Sec. 2, Ch. 185, L. 2023.

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).

7-5-131. Right of initiative and referendum. (1) Except as provided in subsection (2), 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 may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-137 and Title 13, chapter 28.

(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;

(e) the prioritization of the enforcement of any state law by a unit of local government; or

(f) the regulation of auxiliary containers, defined in 7-1-121(4), as prohibited by 7-1-121(2).

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; amd. Sec. 3, Ch. 220, L. 2021; amd. Sec. 18, Ch. 225, L. 2025.

Cross-References

Right of initiative and referendum, Art. XI, sec. 8, Mont. Const.

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. Sanctuary jurisdiction prohibited. A local government as defined in 2-1-601 may not enact, adopt, implement, enforce, or refer to the electorate a policy described in 2-1-602.

History: En. Sec. 6, Ch. 101, L. 2021.

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.

Part 23. County Contracts

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304 and Title 18, chapter 2, part 5, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of $80,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and subsection (4) of this section and except as provided in Title 18, chapter 2, part 5, each contract subject to bidding must be let to the lowest responsible bidder.

(4) A contract may not be issued in violation of 7-5-2311 regarding a conflict of interest.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 1, Ch. 134, L. 1981; amd. Sec. 6, Ch. 349, L. 1985; amd. Sec. 1, Ch. 98, L. 1991; amd. Sec. 1, Ch. 203, L. 1997; amd. Sec. 1, Ch. 239, L. 1999; amd. Sec. 2, Ch. 252, L. 1999; amd. Sec. 1, Ch. 523, L. 2003; amd. Sec. 4, Ch. 574, L. 2005; amd. Sec. 1, Ch. 110, L. 2013; amd. Sec. 4, Ch. 710, L. 2025.

CHAPTER 11. GENERAL PROVISIONS RELATED TO SERVICES

Part 10. Special Districts—Creation and Governance

7-11-1002. Definitions. As used in this part, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government.

(2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly.

(3) (a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

History: En. Sec. 2, Ch. 286, L. 2009.

Attorney General's Opinions

County Authorized to Appropriate Money for Museum — City Authorized to Appropriate Money for Public Purpose — Constitutionality Analyzed: Pursuant to 7-16-2202 (now repealed), a county, but not a city, is authorized to create a program to provide grants to private, nonprofit museums. However, pursuant to 7-1-4124, a city is allowed to grant money to public or private entities as long as the grant is for a public purpose, such as a museum that would enhance the education and enjoyment of the general public, but that would not be merely for the gain of a private entity. The Attorney General declined to opine regarding the constitutionality of 7-1-4124 or 7-16-2202 (now repealed), in light of the prohibition in Art. V, sec. 11(5), Mont. Const., against the appropriation of public funds for any private individual, private association, or private corporation not under control of the state, but did analyze that constitutional provision as it related to the question of county or city expenditures for grants to private museum programs, concluding that the constitutional prohibition applies only to the appropriation of public funds by the Legislature, not by local governmental entities. 48 A.G. Op. 12 (2000), overruling prior opinions to the contrary in 37 A.G. Op. 25 (1977), 37 A.G. Op. 105 (1978), and 39 A.G. Op. 25 (1981).

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 3. DISASTER AND EMERGENCY SERIVES

Part 3. State Planning and Execution

10-3-303. Declaration of emergency or disaster — effect and termination. (1) A state of emergency may be declared by the governor when the governor determines that an emergency as defined in 10-3-103 exists. A state of disaster may be declared by the governor when the governor determines that a disaster, as defined in 10-3-103, has occurred. The governor may not declare another state of emergency or disaster based on the same or substantially similar facts and circumstances without legislative approval.

(2) (a) An executive order or proclamation of a state of emergency activates the emergency response and disaster preparation aspects of the state disaster and emergency plan.

(b) An executive order or proclamation of a state of disaster activates the disaster response and recovery aspects of the state disaster and emergency plan.

(c) Both the disaster preparation aspects and disaster response and recovery aspects of the plans in subsections (2)(a) and (2)(b) are the programs applicable to the political subdivision or area and are authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies. An executive order or proclamation may authorize the practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of emergency or disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

(3) (a) Except as provided in subsection (3)(b), a state of emergency or disaster may not continue for longer than 45 days unless continuing conditions of the state of emergency or disaster exist, which must be determined through a poll of the legislature as provided in 10-3-122 or by the declaration of the legislature by joint resolution of continuing conditions of the state of emergency or disaster.

(b) A state of emergency or disaster may continue for a drought, an earthquake, flooding, or a wildfire as long as continuing conditions of the state of emergency or disaster exist unless terminated by the declaration of the legislature by joint resolution of termination of the state of emergency or disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

(5) The legislature may, by joint resolution in a regular or special session:

(a) terminate a state of emergency or disaster as provided in subsection (4)(c);

(b) extend a state of disaster;

(c) provide conditions or limits on the governor's actions taken pursuant to 10-3-104; and

(d) approve or disapprove the continuation of any executive order, proclamation, or regulation that was enacted based on a state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6); amd. Sec. 20, Ch. 56, L. 2009; amd. Sec. 5, Ch. 255, L. 2009; amd. Sec. 2, Ch. 252, L. 2019; amd. Sec. 11, Ch. 504, L. 2021.

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

Proclamation of emergency, 10-3-505.

TITLE 13. ELECTIONS

CHAPTER 1. GENERAL PROVISIONS

Part 1. General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accepted ballot" means a ballot that has been completed by an elector and the election administrator has determined that it may be counted.

(2) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(3) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(4) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(5) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(6) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(7) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(8) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(9) "Ballot number variance" means the difference between the number of ballots issued for both poll electors and absentee electors and the number of ballots counted.

(10) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(11) "Challenged ballot" means a ballot cast by an individual whose eligibility to vote has been challenged pursuant to 13-13-301.

(12) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) The term does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) meals and lodging provided by individuals in their private residences for a candidate or other individual;

(iii) the use of a person's real property for a fundraising reception or other political event; or

(iv) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(13) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(14) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(15) "Disability" means a temporary or permanent mental or physical condition, such as:

(a) impaired vision;

(b) being deaf or hard of hearing;

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(d) impaired mental or physical functioning that makes it difficult for the person to participate in the process of voting.

(16) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(17) (a) "Election administrator" means, except as provided in subsection (17)(b), the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(18) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an election communication.

(19) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(20) "Election official" means an election administrator, election deputy, or election judge.

(21) "Election worker" means an individual designated by an election official to perform election support duties.

(22) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an electioneering communication.

(23) "Elector" means an individual qualified to vote under state law.

(24) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in 13-37-220; or

(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not considered contributions as defined in this section;

(ii) except as provided in subsection (24)(a)(ii), payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees;

(v) the use of a person's real property for a fundraising reception or other political event; or

(vi) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(25) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(26) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

(27) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(28) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(29) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (29), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(30) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(31) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(32) "Individual" means a human being.

(33) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(34) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(35) "Overvote" means the number of selections made by an elector on a ballot is more than the maximum number allowed.

(36) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in this section.

(37) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(38) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when:

(i) a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of $250 or less; or

(ii) two or more candidates make an election communication or an electioneering communication together in support of their own campaigns.

(e) A joint fundraising committee is not a political committee.

(39) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(40) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(41) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(42) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(43) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(44) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(45) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(46) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(47) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503 and 13-17-510.

(48) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(49) "Regular ballot" means an official ballot that has been issued to an elector.

(50) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(51) "Rejected ballot" means a ballot that has been cast but cannot be counted by law.

(52) "Religious organization" means a house of worship with the major purpose of supporting religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic documents of the organization must list a formal code of doctrine and discipline, and the organization must spend the majority of its money on religious activities such as regular religious services, educational preparation for its ministers, development and support of its ministers, membership development, outreach and support, and the production and distribution of religious literature developed by the organization.

(53) "Replacement ballot" means a regular ballot issued by an election administrator or election judge to replace a regular ballot.

(54) "Report of the canvass" means a report that contains the information required to be entered into the record at the canvass as provided in 13-15-404 and 13-15-506.

(55) "School election" has the meaning provided in 20-1-101.

(56) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(57) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(58) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(59) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(60) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(61) "Spoiled ballot" means a ballot that has been mistakenly marked, damaged, or altered.

(62) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(63) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(64) "Undervote" means when the number of choices selected by an elector on a ballot is less than the maximum number allowed for that contest or when no selection is made for a single-choice contest.

(65) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(66) "Voided ballot" means a ballot that has been marked "void" by an election administrator.

(67) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

(68) "Voter interface device" means a voting system that:

(a) is accessible to electors with disabilities;

(b) communicates voting instructions and ballot information to a voter;

(c) allows the voter to select and vote for candidates and issues and to verify and change selections; and

(d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

(69) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

History: Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983; amd. Sec. 31, Ch. 370, L. 1987; amd. Sec. 1, Ch. 339, L. 1989; amd. Sec. 1, Ch. 390, L. 1993; amd. Sec. 2, Ch. 246, L. 1997; amd. Sec. 1, Ch. 208, L. 1999; amd. Sec. 1, Ch. 401, L. 2001; amd. Secs. 5, 93(1), Ch. 414, L. 2003; amd. Sec. 1, Ch. 475, L. 2003; amd. Sec. 1, Ch. 273, L. 2007; amd. Sec. 3, Ch. 481, L. 2007; amd. Sec. 10, Ch. 89, L. 2009; amd. Sec. 1, Ch. 297, L. 2009; amd. Sec. 2, Ch. 336, L. 2013; amd. Sec. 2, Ch. 347, L. 2013; amd. Sec. 165, Ch. 49, L. 2015; amd. Sec. 2, Ch. 259, L. 2015; amd. Sec. 1, Ch. 63, L. 2017; amd. Sec. 6, Ch. 242, L. 2017; amd. Sec. 1, Ch. 368, L. 2017; amd. Sec. 2, Ch. 325, L. 2019; amd. Sec. 9, Ch. 337, L. 2019; amd. Sec. 1, Ch. 61, L. 2021; amd. Sec. 2, Ch. 492, L. 2021; amd. Sec. 3, Ch. 494, L. 2021; amd. Sec. 3, Ch. 565, L. 2021; amd. Sec. 1, Ch. 571, L. 2021; amd. Sec. 2, Ch. 155, L. 2023; amd. Sec. 1, Ch. 311, L. 2023; amd. Sec. 2, Ch. 237, L. 2025; amd. Sec. 2, Ch. 390, L. 2025; amd. Sec. 1, Ch. 753, L. 2025.

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.
Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.
Amendment by initiative, Art. XIV, sec. 9, Mont. Const.
People as a political body defined, 1-1-401.
Electors eligible to vote in election for fire district board of trustees, 7-33-2106.
Definition of qualified elector for conservation district elections, 76-15-103(8).
Elector requirement in election to create conservation district project area, 76-15-606.

Administrative Rules

ARM 44.11.103 Introduction and definitions.
ARM 44.11.202 Political committee, definition and types, for the purposes of Title 13, ch. 35 and 37.
ARM 44.11.203 Primary purpose.

ARM 44.11.220 Statement of candidacy.
ARM 44.11.401 Interpretive rule regarding definition of "contribution" for the purposes of Title 13, ch. 35 and 37.
ARM 44.11.501 Interpretive rule regarding definition of "expenditure" for the purposes of Title 13, ch. 35 and 37.
ARM 44.11.602 Coordination.
ARM 44.11.603 De minimis.
ARM 44.11.604 Election communication.
ARM 44.11.605 Electioneering communication.
ARM 44.11.608 Personal use of campaign funds.

Attorney General's Opinions

Holidays — State General Election Day: State primary election days, including the day of the primary election for choosing delegates to the constitutional convention, are not state holidays. State general election days, including the day of the general election for choosing delegates to the constitutional convention, are state holidays. 34 A.G. Op. 20 (1971).

13-1-104. Times for holding general elections. (1) A general election must be held throughout the state on the first Tuesday after the first Monday in November.

(2) In every even-numbered year, the following elections must be held on general election day:

(a) an election on any ballot issue submitted to electors pursuant to Article III, section 6, unless the legislature orders a special election, or Article XIV, section 8, of the Montana constitution;

(b) an election of federal officers, members of the legislature, state officers, multicounty district officers elected at a statewide election, district court judges, and county officers; and

(c) any other election required by law to be held on general election day in an even-numbered year.

(3) In every odd-numbered year, the following elections must be held on the same day as the general election:

(a) an election of officers for municipalities required by law to hold the election; and

(b) any other election required by law to be held on general election day in an odd-numbered year.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983; amd. Sec. 2, Ch. 216, L. 1987; amd. Sec. 1, Ch. 644, L. 1987; amd. Sec. 1, Ch. 514, L. 1999; amd. Sec. 2, Ch. 475, L. 2003; amd. Sec. 166, Ch. 49, L. 2015.

Cross-References

Vote on initiative and referendum measures, Art. III, sec. 6, Mont. Const.
Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.
Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.
General election day legal holiday, 1-1-216.

Attorney General's Opinions

Submission of Constitutional Initiative at Statewide Primary Election Allowable: Citing numerous cases affirming the rationale that a primary election cannot be distinguished from any other regular or general election prescribed by law and distinguishing a primary election from a special election, which is an election called for a special purpose and not one fixed by law to occur at regular intervals, the Attorney General held that a constitutional amendment proposed by initiative pursuant to this section may be submitted to the voters at a regular statewide primary election. 44 A.G. Op. 20 (1991). See also 19 A.G. Op. 412 (1942).

Conservation District Officers: Officers of conservation districts shall be elected at the general election held in November of even-numbered years. 38 A.G. Op. 74 (1980).

Holidays — State General Election Day: State primary election days, including the day of the primary election for choosing delegates to the constitutional convention, are not state holidays. State general election days, including the day of the general election for choosing delegates to the constitutional convention, are state holidays. 34 A.G. Op. 20 (1971).

13-1-108. Notice of political subdivision elections. (1) Except as otherwise provided in this section, an election administrator conducting a political subdivision election shall give notice of the election at least three times no earlier than 40 days and no later than 10 days before the election. The notice must be published in a newspaper of general circulation in the jurisdiction where the election will be held or by broadcasting the notice on radio or television as

provided in 2-3-105 through 2-3-107. The notice must be given using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection are fulfilled upon the third publication or broadcast of the notice.

(2) If the newspaper of general circulation within a political subdivision is a weekly newspaper, the notice may be published only two times and the notice requirements are fulfilled upon the second publication of the notice.

(3) With respect to an election on the creation or dissolution of a special purpose district or the alteration of a special purpose district's boundaries, the notice must include a specific description of the proposed boundaries or the proposed change to the boundaries.

History: En. Sec. 6, Ch. 571, L. 1979; amd. Sec. 2, Ch. 273, L. 2007; amd. Sec. 2, Ch. 297, L. 2009; amd. Sec. 3, Ch. 242, L. 2011; amd. Sec. 169, Ch. 49, L. 2015.

13-1-111. Qualifications of voter. (1) A person may not vote at elections unless the person is:

(a) registered as required by law;

(b) 18 years of age or older;

(c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and

(d) a citizen of the United States.

(2) A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.

(3) A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701; amd. Sec. 3, Ch. 273, L. 2007.

Part 5. Special Purpose District Elections

Part Cross-References

Seeking election to service on more than one special purpose district board, 7-1-205.

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.

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 105 days and no later than 90 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) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 90th day before the date of the election.

(b) An unsuccessful candidate for office at a primary election may not seek nomination by write-in vote or petition for the same office at the general 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; amd. Sec. 2, Ch. 643, L. 2025.

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.

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.

(c) If the special purpose district will be administered by a city, town, or consolidated city-county, the city, town, or consolidated city-county may schedule an election to create, dissolve, or continue a special purpose district on the same day as the general municipal 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; amd. Sec. 1, Ch. 367, L. 2023.

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.

CHAPTER 14. NONPARTISAN ELECTIONS

13-14-111. Application of general laws. Except as otherwise provided in this chapter, candidates for nonpartisan offices, including judicial offices, must be nominated and elected according to the provisions of this title.

History: En. Sec. 139, Ch. 571, L. 1979; amd. Sec. 51, Ch. 56, L. 2009.

13-14-112. Declarations for nomination -- fee -- filing. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. Except for a candidate covered under 7-1-205, a candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the individual seeks.

(4) Declarations must be filed:

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201; and

(b) within the filing period provided in 13-10-201(7) for the office that the individual seeks.

History: En. Sec. 140, Ch. 571, L. 1979; amd. Sec. 34, Ch. 475, L. 2003; amd. Sec. 13, Ch. 586, L. 2005; amd. Sec. 9, Ch. 292, L. 2009; amd. Sec. 42, Ch. 336, L. 2013; amd. Sec. 185, Ch. 49, L. 2015; amd. Sec. 4, Ch. 141, L. 2019.

Cross-References

Declaration for nomination for primary election, 13-10-201.
Filing fees, 13-10-202.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination or a declaration for nomination containing the information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) Petitions for nomination or declarations for nomination must be filed within the filing period provided in 13-10-201(7).

(3) Except for a candidate covered under 7-1-205, a candidate may not file for more than one public office.

History: En. Sec. 141, Ch. 571, L. 1979; amd. Sec. 35, Ch. 475, L. 2003; amd. Sec. 14, Ch. 586, L. 2005; amd. Sec. 1, Ch. 230, L. 2009; amd. Sec. 10, Ch. 292, L. 2009; amd. Sec. 43, Ch. 336, L. 2013; amd. Sec. 186, Ch. 49, L. 2015; amd. Sec. 5, Ch. 141, L. 2019.

Cross-References
Declaration of nomination, 13-10-201.

TITLE 15. TAXATION

CHAPTER 10. PROPERTY TAX LEVIES

Chapter Cross-References
Tax purposes, Art. VIII, sec. 1, Mont. Const.
Property tax administration, Art. VIII, sec. 3, Mont. Const.
Equal valuation, Art. VIII, sec. 4, Mont. Const.
Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

4. Limitation on Property Taxes

Part Attorney General's Opinions

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.

15-10-406. 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.

15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of 15-10-425(2)(b) and 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 the average rate of inflation for the prior 3 years, not to exceed 4%. 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 75% of the current year's newly taxable value from class four property and the applicable amount pursuant to subsection (1)(b) of newly taxable value from classes other than class one, class two, and class four, plus the average rate of inflation for the prior 3 years.

(b) For the purposes of subsection (1)(a), the governmental entity may include the following percentages of newly taxable value from classes other than class one, class two, and class four:

(i) 100% of the taxable value of class eight property that receives an abatement under 15-6-138(4)(b);

(ii) 100% of the taxable value of property that receives a new or expanding industry abatement under 15-24-1402 or a historic property abatement under 15-24-1603 from the time the abatement is granted through completion of construction; and

(iii) 50% if the governmental entity creates a large taxpayer reserve account and meets the deposit requirement of 7-6-620(2); or

(iv) 40% if the governmental entity does not create a large taxpayer reserve account or does not meet the deposit requirement of 7-6-620(2).

(c) 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.

(d) For the purposes of subsection (1)(a), the department shall calculate 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 the 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 purposes 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 purposes 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) This section does not apply to:

(a) mills imposed under 15-10-109, 20-9-331, 20-9-333, 20-9-360, or 20-25-439;

(b) school district levies established in Title 20 or any other title of the Montana Code Annotated; or

(c) a mill levy imposed for a newly created regional resource authority.

(6) For the 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;

(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); and

(c) may not include revenue distributed to a county to provide state property tax assistance pursuant to 15-6-701.

(8) (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 (8)(a)(ix) is limited to the amount in the resolution creating the authority.

(b) A levy authorized under subsection (8)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(9) 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.

(10) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for the 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; amd. Sec. 9, Ch. 506, L. 2021; amd. Sec. 3, Ch. 45, L. 2023; amd. Sec. 4, Ch. 729, L. 2023; amd. Sec. 1, Ch. 95, L. 2025; amd. Sec. 2, Ch. 554, L. 2025; amd. Sec. 1, Ch. 636, L. 2025; amd. Sec. 1, Ch. 658, L. 2025; amd. Sec. 7, Ch. 775, L. 2025.

Administrative Rules

ARM 42.20.501 Definitions.
ARM 42.20.514 Determination of total taxable value of eliminated property.
ARM 42.20.515 Determination of total taxable value of newly taxable property.

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.

(a) The resolution, charter amendment, or petition must include:

(i) the specific purpose for which the additional money will be used;

(ii) the specific amount of money to be raised and the approximate number of mills to be imposed; and

(iii) whether the levy is permanent or the durational limit on the levy.

(b) Except for a school district levy established in Title 20, the resolution, charter amendment, or petition may provide that the mill levy is subject to the provisions of 15-10-420(1)(a).

(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) the statement that "an increase in property taxes may lead to an increase in rental costs"; and

(b) a statement of the impact of the election on homes valued at $100,000, $300,000, and $600,000 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 of voters voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in the amount 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 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; amd. Sec. 2, Ch. 388, L. 2023; amd. Sec. 2, Ch. 95, L. 2025.

TITLE 18. PUBLIC CONTRACTS

CHAPTER 4. MONTANA PROCUREMENT ACT

Part 3. Procurement Procedure

18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the submission of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid submission deadline.

(3) Bids and other information received from bidders in response to an invitation for bids may not be inspected by the public until the department provides notice of intent to award a contract as provided in subsection (9). After the department provides notice of intent to award a contract, bids and other information received from bidders may be inspected by other bidders and the public subject to the same limitations specified in 18-4-304(8) for competitive sealed proposals.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(8) In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies.

(9) Prior to awarding a contract, the department shall provide to the public notice of intent to award a contract and of 7 days to submit written comments regarding the proposed award.

History: En. Sec. 14, Ch. 519, L. 1983; amd. Sec. 2, Ch. 761, L. 1991; amd. Sec. 12, Ch. 443, L. 1997; amd. Sec. 4, Ch. 289, L. 2005; amd. Sec. 2, Ch. 226, L. 2007; amd. Sec. 3, Ch. 489, L. 2023.

Cross-References

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

Attorney General's Opinions

Janitorial Services — Bidding Requirement: Janitorial services contracts are subject to competitive bidding requirements because they do not involve the exercise of special skills, taste, or discretion. 30 A.G. Op. 5 (1963).

18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals and other information received from offerors in response to a request for proposals may not be inspected by the public until the department provides notice of intent to award a contract as provided in subsection (7). After the department provides notice of intent to award a contract, proposals and other information received from offerors may be inspected by other offerors and the public subject to the limitations in subsection (8).

(5) The request for proposals must state the evaluation criteria and their relative importance. If an award is made, it must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.

(7) Prior to awarding a contract, the department shall provide to the public notice of intent to award a contract and of 7 days to submit written comments regarding the proposed award.

(8) Prior to releasing proposals and other information received from offerors, the department shall evaluate whether public disclosure must be limited:

(a) under the Uniform Trade Secrets Act provided for in Title 30, chapter 14, part 4;

(b) due to matters involving individual safety; and

(c) as required by other constitutional protections.

History: En. Sec. 15, Ch. 519, L. 1983; amd. Sec. 10, Ch. 130, L. 1995; amd. Sec. 13, Ch. 443, L. 1997; amd. Sec. 2, Ch. 416, L. 1999; amd. Sec. 5, Ch. 289, L. 2005; amd. Sec. 4, Ch. 489, L. 2023.

CHAPTER 8. PROCUREMENT OF SERVICES

Part 2. Architectural, Engineering, & Land Surveying Services

Part Cross-References

Policy regarding practice of architecture — construction contracts, 18-2-111 through 18-2-114.

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.

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 transportation commission has approved pursuant to an alternative project delivery method under 60-2-120 or as 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; amd. Sec. 3, Ch. 111, L. 2021; amd. Sec. 2, Ch. 145, L. 2023.

Attorney General's Opinions

Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

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 transportation commission has approved pursuant to an alternative project delivery method under 60-2-120 or as 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; amd. Sec. 4, Ch. 111, L. 2021; amd. Sec. 3, Ch. 145, L. 2023.

Attorney General's Opinions

Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

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.

TITLE 23. PARKS, RECREATION, SPORTS, & GAMBLING

CHAPTER 2. RECREATION

Part 3. Recreational Use of Streams

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 rivers and streams.

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).

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***.**

Cross-References
Recreational purposes defined, 70-16-301.
Flood plain and floodway management, Title 76, ch. 5.

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.

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 bird hunting license, 87-2-411.
Game animal licenses, Title 87, ch. 2, part 5.

Administrative Rules

Title 12, chapter 4, subchapter 1, ARM Management of recreational use of rivers and streams.

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).

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 arbitration 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.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.
Owner of land bounded by water, 70-16-201.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

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.

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(5) 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.

23-2-321. 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.

Cross-References
Liability, Title 27, ch. 1, part 7.
Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

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.

Cross-References
Title by prescription, 70-19-405.

TITLE 27. CIVIL LIABILITY, REMEDIES, & 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.

27-5-111. Short title. This chapter may be cited as the "Uniform Arbitration Act".

History: En. Sec. 1, Ch. 684, L. 1985.

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.

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.

Cross-References
Arbitration of unlawful termination of public employee, 2-18-621.
Statute of limitations tolled by submission to arbitration, 27-2-405.
Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.
Arbitration of public employees' collective bargaining issue, 39-31-310.
Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.
Arbitration of new motor vehicle warranty disputes, 61-4-515.
Arbitration of threshers' lien claims, 71-3-801.

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.

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 appointment. 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.

Part 2. Action by Arbitrators

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.

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.

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.

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.

Cross-References
Cost of arbitration between firefighters' organization and public employer, 39-34- 106.

Part 3. Procedure Following Award

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.

27-5-321. 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.

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.

Cross-References
Statute of limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. (1) 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.

(2) (a) An agreement concerning venue involving an electrical generation facility in this state is not valid unless the agreement requires that arbitration occur within the state before a panel of three arbitrators selected under the Uniform Arbitration Act unless all parties agree in writing to a single arbitrator.

(b) For the purposes of this subsection, "electrical generation facility" has the meaning provided in 75-20-104.

History: En. Sec. 20, Ch. 684, L. 1985; amd. Sec. 607, Ch. 56, L. 2009; amd. Sec. 1, Ch. 376, L. 2021.

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.

Cross-References
Statute of limitations tolled by submission to arbitration, 27-2-405.

TITLE 49. HUMAN RIGHTS

CHAPTER 2. ILLEGAL DISCRIMINATION

Chapter Administrative Rules

Title 24, chapter 8, ARM Human Rights Bureau.

Title 24, chapter 9, ARM Human Rights Commission.

Part 3. Prohibited Discriminatory Practices

Part Cross-References

Price discrimination, Title 30, ch. 14, part 9.
Unfair discrimination prohibited — life insurance, annuities, and disability insurance, 33-18-206.
No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or 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: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979; amd. Sec. 1799, Ch. 56, L. 2009.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

Cross-References

When accountability exists, 45-2-302.
Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) 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.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide 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; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

(6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise required by a contract or other agreement under which preferential treatment may be given to an individual based on the individual's status as an Indian living on or near a reservation.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985; amd. Sec. 3, Ch. 506, L. 1991; amd. Sec. 3, Ch. 13, L. 1993; amd. Sec. 3, Ch. 407, L. 1993; amd. Sec. 1, Ch. 287, L. 2001; amd. Sec. 2, Ch. 205, L. 2011.

Cross-References

Work-study program, 20-25-707.
Equal pay for women for equivalent service, 39-3-104.
Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.
Women in employment, Title 39, ch. 7.
Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.
Right to refuse to participate in abortion, 50-20-111.

Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. The 1985 amendments of 49-2-303(3) and 49-3-201(5) overruled 39 A.G. Op. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity. 41 A.G. Op. 57 (1986). (But see 1987 amendment to 2-2-302.)

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).

49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1).

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6); amd. Sec. 3, Ch. 682, L. 1991; amd. Sec. 8, Ch. 407, L. 1993.

49-2-310. Maternity leave -- unlawful acts of employers. It is unlawful for an employer or an employer's agent to:

(1) terminate a woman's employment because of the woman's pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for the pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which the employee is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983; amd. Sec. 1800, Ch. 56, L. 2009.

Cross-References

Parental leave for state employees, 2-18-606.
Wrongful discharge from employment, Title 39, ch. 2, part 9.

Administrative Rules

Title 24, chapter 9, subchapter 12, ARM Maternity leave.

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying an intent to return at the end of a pregnancy-related leave of absence, the employee must be reinstated to the employee's original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983; amd. Sec. 1801, Ch. 56, L. 2009.

Administrative Rules

ARM 24.9.1207 Return to employment after maternity leave.

CHAPTER 3. GOVERNMENTAL CODE OF FAIR PRACTICES

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) "Sex" has the meaning provided in 1-1-201.

(5) "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.

(6) "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; amd. Sec. 28, Ch. 685, L. 2023.

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.

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.

49-3-106. 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 & 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.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.
Classified service employees — municipal commission-manager government, 7-3-4415.
Employment by county Board of Park Commissioners — discrimination prohibited, 7-16-2326.
Work-study program, 20-25-707.
Equal pay for women for equivalent service, 39-3-104.
Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.
Women in employment, Title 39, ch. 7.
Veterans' employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.
Right to refuse to participate in abortion, 50-20-111.

Administrative Rules

Title 2, chapter 21, subchapter 14, ARM Persons with disabilities employment preference policy.

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.

Cross-References

State employment service, 39-1-102, 39-51-307.

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.

Cross-References
Public Contracts, Title 18.

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.

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.

49-3-315. 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, & TREATMENT

Chapter Cross-References
Metropolitan sanitary and storm sewer systems, Title 7, ch. 13, part 1.
County water and sewer districts, 7-13-2203.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.
Cities and towns — water supplies and regulation, Title 7, ch. 13, part 44.
Nuisances, Title 27, ch. 30.
Water treatment plant operators, Title 37, ch. 42.
Licensing of plumbers, Title 37, ch. 69, part 3.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Applicability of public water supply laws to subdivisions, 76-4-131.

Water and ground water — policy of state, 85-1-101.

Chapter Administrative Rules

Title 17, chapter 38, ARM Public water and sewage system requirements.

Part 3. Regional Water and Wastewater Authority Act

Part Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

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.

Cross-References

County water and/or sewer districts, Title 7, ch. 13, part 22.

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.

75-6-310. 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.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.

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 governing 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.

75-6-320. 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.

Cross-References
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

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.

CHAPTER 7. AQUATIC ECOSYSTEM PROTECTIONS

Chapter Cross-References
Wetlands Protection Advisory Council, 2- 15-3405.
Smith River Management Act, Title 23, Ch. 2, part 4.

Part 1. Streambeds

Part Cross-References
Ferry keepers 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 Stream- bed and Land Preservation Act of 1975.

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).

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.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Beneficial use defined, 85-2-102.
Adjudication of water rights, Title 85, ch. 2, part 2.
Policy for protection of fish and wildlife resources in streams, 87-5-501.

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 Conservation) 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.

Administrative Rules

ARM 36.2.402 Definitions.

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.

Cross-References
Existing water rights protected, Art. IX, sec. 3, Mont. Const.

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.

75-7-111. 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.

Administrative Rules

ARM 36.2.403 Standard forms.

Attorney General's Opinions

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 Conservation) 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 itself 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).

75-7-113. 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 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) Except as provided in subsection (4)(b), 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.

(b) If the governor declares a state of emergency pursuant to 10-3-303, the team shall make an onsite inspection within 30 days of receipt of the emergency notice.

(5) (a) Except as provided in subsection (5)(b), each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, the member's denial, approval, or modification of the project.

(b) If the governor declares a state of emergency pursuant to 10-3-303, each member of the team shall recommend in writing, within 40 days of the date of the emergency notice, the member's 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.

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***.**

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

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.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

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.

Cross-References
Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4.

Administrative Rules
Title 36, chapter 2, subchapter 4, ARM Minimum standards and guidelines for Natural Streambed and Land Preservation Act of 1975.

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.

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 $15,000. If the amount of liability for restoration exceeds $15,000, 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; amd. Sec. 2, Ch. 331, L. 2021.

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.

75-7-125. 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

Chapter Cross-References

Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Agricultural appraisal, Title 15, ch. 7, part 2.
Planning functions of Department of Commerce, 90-1-102, 90-1-103.

Chapter Administrative Rules

ARM 36.15.204 Local flood plain regulations — requirements.

Part 1. General Provisions

Part Attorney General's Opinions

Authority of Self-Governing Local Government to Enforce Master Plan (now Growth Policy): A local government unit with self-governing powers may not refuse to file a certificate of survey because the involved parcel encompasses less than 40, but equal to or more than 20, acres even if its master plan (now growth policy) prohibits divisions of land of such size. A local government that has adopted a master plan (now growth policy) to regulate future land-use planning and zoning may condition issuance of permits for the construction, alteration, or enlargement of structures upon compliance with such plan. 42 A.G. Op. 16 (1987).

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.

(5) "Land use management techniques and incentives" include but are not limited to zoning regulations, subdivision regulations, and market incentives.

(6) "Market incentives" may include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

(7) "Mayor" means mayor of a city.

(8) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

(9) "Person" means any individual, firm, or corporation.

(10) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

(11) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(12) "Public place" means any tract owned by the state or its subdivisions.

(13) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(14) "Utility" means any facility used in rendering service that the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979; amd. Sec. 4, Ch. 582, L. 1999; amd. Sec. 1, Ch. 599, L. 2003; amd. Sec. 1, Ch. 455, L. 2007.

Administrative Rules

ARM 17.36.101 Definitions.

Attorney General's Opinions

No Legal Effect of Comprehensive Plan Adopted Before October 1, 1999, as Basis for New Zoning Regulations: Pursuant to the transition and applicability language in Senate Bill No. 97 (1999) (Ch. 582, L. 1999), a comprehensive plan adopted prior to October 1, 1999, has no legal effect as the basis for new local zoning or subdivision regulations unless it meets the requirements of a growth policy under 76-1-601. Zoning regulations that were adopted pursuant to master

plans, comprehensive plans, and comprehensive development plans prior to October 1, 2001, are enforceable, but county and municipal zoning regulations may not be adopted or substantively revised after October 1, 2001, unless a growth policy is adopted for the entire area of the planning board having jurisdiction. Application of previously adopted zoning regulations does not constitute the adoption of zoning regulations, so rezoning is not precluded, and routine minor revisions that do not have any impact on growth policy may be made. 49 A.G. Op. 23 (2002).

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.

Attorney General's Opinions

Planning Board Appointees — Residency — Law Not Retroactive: Members of a City-County Planning Board appointed prior to July 1, 1979, remain qualified to serve out their appointed terms although new residence requirements were enacted after they began their terms. A statute must be expressly declared retroactive to be retroactive. The amended residence requirements statute had no such declaration and so has only prospective application. 38 A.G. Op. 28 (1979).

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.

76-1-211. 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).

CHAPTER 5. FLOOD PLAIN AND FLOODWAY MANAGEMENT

Chapter Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Flood control by water and sewer districts, 7-13-2218.
Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.
Easements relating to flooding, 70-17-101.
Application of The Natural Streambed and Land Preservation Act of 1975, 75-7-105.
Renewable resource development program — flood control, 85-1-602.
Flood control by conservancy districts, 85-9-102.

Chapter Administrative Rules

Title 36, chapter 15, ARM Flood plain management.

Part 4. Use of Flood Plains and Floodways

Part Cross-References

Easements relating to flooding, 70-17-101.

Part Administrative Rules

Title 36, chapter 15, ARM Floodplain management.

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.

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

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 structures, 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.

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).

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

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

76-14-111. 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.

Administrative Rules

ARM 36.17.614 Projects eligible for categorical exclusion from Montana Environmental Policy Act (MEPA) review.

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 rangeland 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.

(3) Deposits to the rangeland improvement loan special revenue account must be placed in short-term investments, and the earnings must be deposited in the rangeland improvement loan special revenue account.

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; amd. Sec. 1, Ch. 437, L. 2023.

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.

Administrative Rules

ARM 36.17.614 Projects eligible for categorical exclusion from Montana Environmental Policy Act (MEPA) review.

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.

Administrative Rules

ARM 36.17.614 Projects eligible for categorical exclusion from Montana Environmental Policy Act (MEPA) review.

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.

Administrative Rules

ARM 36.17.614 Projects eligible for categorical exclusion from Montana Environmental Policy Act (MEPA) review.

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.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

CHAPTER 15. CONSERVATION DISTRICTS

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.

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.

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.

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; amd. Sec. 2, Ch. 138, L. 2021; amd. Sec. 2, Ch. 119, L. 2023.

76-15-107. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

History: En. Sec. 1, Ch. 116, L. 2023.

76-15-108. Conservation district fund -- conservation district special revenue account. (1) There is a conservation district fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state must be deposited into this fund. Earnings not transferred to the conservation district account as provided in subsection (2) must be retained in the conservation district fund.

(2) The conservation district account established in 76-15-106 receives earnings from the conservation district fund as provided in 17-5-703.

History: En. Sec. 2, Ch. 717, L. 2023.

Part 2. Creation of Conservation Districts

Part Attorney General's Opinions

Effect of Unification of City-County Government Upon Existing Conservation District: The geographical territory of the city of Butte was not incorporated into the Mile High Conservation District by approval of a consolidated form of local government for Butte and the county of Silver Bow. If Butte is to be included, the appropriate statutory procedure must be followed. 37 A.G. Op. 20 (1977).

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).

Cross-References

Applicability of Montana Administrative Procedure Act, 2-4-107.

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.

Administrative Rules

ARM 36.6.101 Conduct of referendum.

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.

Administrative Rules

ARM 36.6.101 Conduct of referendum.

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.

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

Attorney General's Opinions

Effect of Unification of City-County Government Upon Existing Conservation District: The geographical territory of the city of Butte was not incorporated into the Mile High Conservation District by approval of a consolidated form of local government for Butte and the county of Silver Bow. If Butte is to be included, the appropriate statutory procedure must be followed. 37 A.G. Op. 20 (1977).

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.

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.

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).

Conservation District Elections: Candidates for Supervisor must run at large in the entire district in both elections, each qualified elector voting for 10 candidates in the nominating election and five candidates in the general election when all five Supervisors will be elected. Ten candidates may be nominated to run in the general election when five Supervisors will be elected, and a reasonable method of determining recipients of 4-year terms must be chosen by the registrar and made available to candidates and electors prior to election. 37 A.G. Op. 137 (1978).

Election of Conservation District Supervisors to Be by Separate Ballot: Since there are no partisan designations in a Conservation District Supervisor election, a separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the Supervisor election. A Supervisor, incidentally, must reside in the district wherein he is nominated and elected. 37 A.G. Op. 131 (1978).

Filing Fees: Filing fees are not required for election to the office of Conservation District Supervisor. 37 A.G. Op. 131 (1978).

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.

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).

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).

Conservation District Elections: Candidates for Supervisor must run at large in the entire district in both elections, each qualified elector voting for 10 candidates in the nominating election and five candidates in the general election when all five Supervisors will be elected. Ten candidates may be nominated to run in the general election when five Supervisors will be elected, and a reasonable method of determining recipients of 4-year terms must be chosen by the registrar and made available to candidates and electors prior to election. 37 A.G. Op. 137 (1978).

Election of Conservation District Supervisors to Be by Separate Ballot: Since there are no partisan designations in a Conservation District Supervisor election, a separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the Supervisor election. A Supervisor, incidentally, must reside in the district wherein he is nominated and elected. 37 A.G. Op. 131 (1978).

Filing Fees: Filing fees are not required for election to the office of Conservation District Supervisor. 37 A.G. Op. 131 (1978).

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.

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.

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.

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.

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 districts, 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).

76-15-324. 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.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

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).

76-15-505. 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.

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).

76-15-507. Investment of funds. (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. 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 expenses 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.

76-15-511. 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.

Attorney General's Opinions

Conservation Assessments Subject to Property Tax Limitations: Regular and special assessments by conservation districts are subject to the property tax limitations in Title 15, ch. 10, part 4. 42 A.G. Op. 73 (1988).

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).

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.

Attorney General's Opinions

Mandatory Duty of Board of County Commissioners to Levy Assessment to Support District: Despite the fact that this section 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).

76-15-518. 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).

Cross-References

County taxation, Title 7, ch. 6, part 25.

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).

Cross-References
Official bonds of county officers, 7-4-2212.

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.

76-15-541. 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.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

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.

76-15-621. 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.

Attorney General's Opinions

Conservation Assessments Subject to Property Tax Limitations: Regular and special assessments by conservation districts are subject to the property tax limitations in Title 15, ch. 10, part 4. 42 A.G. Op. 73 (1988).

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.

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.

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.

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 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.

76-15-1005. 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 award a contract according to the selection criteria for proposals and bidding as described in 18-4-303 and 18-4-304.

History: En. Sec. 3, Ch. 155, L. 2015; amd. Sec. 3, Ch. 585, L. 2025.

76-15-1006. Advertisements. (1) The advertisement for requests for bids, proposals, or qualifications must:

(a) set forth the evaluation criteria to be used; and

(b) 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; amd. Sec. 4, Ch. 585, L. 2025.

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) (a) Contracts for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance for which the cost is less than the limit provided in 7-5-2301 may be entered into by direct negotiation.

(b) A contract for architectural, engineering, and land surveying services may be entered into by direct negotiation subject to the limits of 18-8-212.

(c) For other contracts, if the total contract value is estimated to be:

(i) less than $10,000, a purchase technique may be used to meet conservation district needs;

(ii) more than $10,000 but not to exceed $100,000, a limited solicitation procedure may be used. This procedure requires a minimum of three viable written or oral quotations, if available, with an award based on the lowest responsible bid price that meets all criteria and specifications. A conservation district shall document the basis for an award under a limited solicitation procedure.

(iii) more than $100,000, a conservation district shall advertise for bids, proposals, or qualifications pursuant to 76-15-1006 and award a contract using a request for proposal or an invitation to bid pursuant to 76-15-1012.

(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; amd. Sec. 5, Ch. 585, L. 2025.

Cross-References

Competitive, advertised bidding required for certain large purchases or construction contracts, 7-5-2301.

76-15-1012. Terms and extensions. (1) Except as provided in 76-15-1011, prior to the issuance of a contract it must be determined that the contract meets the selection criteria for proposals and bidding as described in 18-4-303 and 18-4-304.

(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; amd. Sec. 6, Ch. 585, L. 2025.

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.

TITLE 85. WATER USE

Title Cross-References
Water rights, Art. IX, sec. 3, Mont. Const.
Water Pollution Control Advisory Council, 2-15-2107.
Board of Water Well Contractors, 2-15-3307.
Water Courts, Title 3, ch. 7.
County water and sewer districts, Title 7, ch. 13, parts 22 and 23.
Municipal sewage and water systems, Title 7, ch. 13, parts 43 and 44.
Property tax exemptions for certain water projects, 15-6-205, 15-6-206.
Taxation of sewage disposal and domestic water supply systems, 15-7-103.
Recreational use of streams, Title 23, ch. 2, part 3.
Smith River Management Act, Title 23, ch. 2, part 4.
Water well contractors, Title 37, ch. 43.
Aircraft landings and takeoffs from public waters, 67-1-204.
Water quality, Title 75, ch. 5.
Public water supplies, distribution, and treatment, Title 75, ch. 6.
Aquatic ecosystem protections, Title 75, ch. 7.
Flood plain and floodway management, Title 76, ch. 5.
Conservation districts — water conservation, Title 76, ch. 15, part 4.
Water projects on state lands, 77-1-605.
Geothermal resources, 77-4-104.
Streamside management zones, Title 77, ch. 5, part 3.
Protection of water from mining or reclamation projects, 82-4-251.
Water Policy Committee duties, 85-2-105.
Fish and Wildlife, Title 87.
Acquisition and sale of water by Department of Fish, Wildlife, and Parks, 87-1-209.
Stream protection, Title 87, ch. 5, part 5.

CHAPTER 2. SURFACE WATER AND GROUND WATER

Chapter Cross-References
Recreational use of streams, Title 23, ch. 2, part 3.
Smith River Management Act, Title 23, ch. 2, part 4.

Chapter Administrative Rules
Title 36, chapter 12, subchapter 1, ARM Water Rights Bureau — Montana Water Use Act.
Title 36, chapter 16, ARM Water reservations — Water Resources Division.

Part 3. Appropriations, Permits, and Certificates of Water Rights

Part Cross-References
Recreational use of streams, Title 23, ch. 2, part 3.

Part Administrative Rules

Title 36, chapter 12, subchapter 1, ARM Water Rights Bureau — Montana Water Use Act.
Title 36, chapter 16, ARM Water reservations — Water Resources Division.

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 a summary of the reviews before September 15, 2026, in accordance with 5-11-210.

(c) Following a review pursuant to this subsection (10) and except as provided in 85-2-331, 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; amd. Sec. 120, Ch. 261, L. 2021; amd. Sec. 1, Ch. 204, L. 2025.

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.

85-2-331. Reservations within Missouri River basin and Little Missouri River basin. (1) Except as provided in 85-20-1401, the state, an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a state water reservation in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for state water reservations within the Missouri River basin and the Little Missouri River basin.

(3) Except as provided in 85-20-1401 and subsection (5), the department shall:

(a) make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for state water reservations in the Missouri River basin above Fort Peck dam.

(b) make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for state water reservations in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Except as provided in 85-20-1401, state water reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issued a permit under Title 85, chapter 2, part 3, prior to the granting of a state water reservation under this section, the department may subordinate the state water reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any state water reservation. If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination. The department shall by order establish the relative priority of applications approved under this section.

(5) The duration of the reservations granted to the municipalities and conservation districts established by the final order of the board of natural resources and conservation establishing water reservations above Fort Peck dam issued July 1, 1992, is extended until those reservations are perfected or until those reservations are revoked pursuant to 85-2-316.

History: En. Sec. 16, Ch. 573, L. 1985; amd. Sec. 3, HB 952, L. 1985; amd. Sec. 7, Ch. 535, L. 1987; amd. Sec. 1, Ch. 134, L. 1989; amd. Sec. 1, Ch. 303, L. 1993; amd. Sec. 452, Ch. 418, L. 1995; amd. Sec. 2, Ch. 330, L. 1997; amd. Sec. 12, Ch. 497, L. 1997; amd. Sec. 12, Ch. 213, L. 2007; amd. Sec. 2, Ch. 204, L. 2025.

Part 6. Yellowstone River Basin

Part Cross-References
Diversions from Yellowstone River Basin, Title 85, ch. 2, part 8.
Yellowstone River Compact, Title 85, ch. 20, part 1.

Part Administrative Rules
Title 36, chapter 12, subchapter 1, ARM Water Rights Bureau — Montana Water Use Act.
Title 36, chapter 16, ARM Water reservations — Water Resources Division.

85-2-601. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations

of water in the Yellowstone River basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational, and other uses and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon, existing rights to water in the Yellowstone basin must be accurately determined for their protection and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: En. 89-8-103 by Sec. 1, Ch. 116, L. 1974; R.C.M. 1947, 89-8-103.

Cross-References
Environmental protection and improvement, Art. IX, sec. 1, Mont. Const.
Water rights, Art. IX, sec. 3, Mont. Const.
Department powers over state waters, 85-1-204.
Negotiations with other states by Department, 85-1-223.
Declaration of policy and purpose, 85-2-101.

85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) "Application" means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or

(ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 and 85-2-436, if applicable, to change the purpose of use.

(2) "Basin" means the Yellowstone River basin.

(3) "Reservation" means a reservation of water provided for by 85-2-316.

History: En. 89-8-104 by Sec. 2, Ch. 116, L. 1974; R.C.M. 1947, 89-8-104(Intro.), (2) thru (4); amd. Sec. 6, Ch. 448, L. 2007.

85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency of the United States may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis must be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

(2) Notwithstanding other provisions of this title, the department shall extend the duration of the 14 conservation district reservations and 8 municipal reservations approved by administrative order dated December 15, 1978, in the basin until those reservations are perfected, or until those reservations are revoked pursuant to 85-2-316.

History: En. 89-8-107 by Sec. 5, Ch. 116, L. 1974; amd. Sec. 10, Ch. 416, L. 1977; R.C.M. 1947, 89-8-107; amd. Sec. 1, Ch. 145, L. 1997.

Cross-References
Negotiations with other states by Department, 85-1-223.
Department powers, 85-2-111.