

Board Training Packet

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Montana Statutes on the Right of the Public to Know and Participate

Constitution of Montana – Article II Declaration of Rights

Section 8. Right to Participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to Know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

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Montana Code Annotated (2023) References For Public Meeting Notice and Citizen Participation

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.*

*Agency defined in 2-3-102, MCA includes local government.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(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.

*Prepared by the MSU Local Government Center for educational use only. For interpretations of the law, please seek competent legal counsel.
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7-1-2121. Publication and content of notice -- proof of publication. (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.

(2) A local government unit shall comply with the notice requirements of 2-3-103, including publication of an agenda prior to a meeting.

(3) Publication must be in a newspaper meeting the qualifications of subsections (4) and (5), except that in a county where a newspaper does not meet these qualifications, publication must be made by posting the notice in three public places in the county designated by resolution of the governing body, one of which may be the county's website if the county has an active website.

(4) (a) The newspaper must:

- (i) be of general circulation;
- (ii) be published at least once a week;
- (iii) be published in the county where the hearing or other action will take place; and
- (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that 1 includes:
 - (A) circulation for the prior 12 months;
 - (B) a statement of net distribution;
 - (C) itemization of the circulation that is paid and that is free; and
 - (D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(5) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(7) The notice must be published twice, with at least 6 days separating each publication.

(8) The published notice must contain:

- (a) the date, time, and place of the hearing or other action;
- (b) a brief statement of the action to be taken;
- (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
- (d) any other information required by the specific section requiring notice by publication.

(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(10) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

(11) If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by

resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required.

7-1-4127. Publication of notice -- content -- proof. (1) A municipality shall comply with the notice requirements of 2-3-103, including publication of an agenda prior to a meeting.

(2) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less, in a municipality in which a newspaper is not published, or in a municipality within a county where a newspaper does not meet the qualifications in subsection (3), publication must be made by posting in three public places in the municipality that have been designated by ordinance, one of which may be the municipality's website if the municipality has an active website.

(3) The newspaper must:

- (a) be of general circulation;
- (b) be published at least once a week;
- (c) be published in the county where the municipality is located; and
- (d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:
 - (i) circulation for the prior 12 months;
 - (ii) a statement of net distribution;
 - (iii) itemization of paid circulation and circulation that is free; and
 - (iv) the method of distribution.

(4) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

(5) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(7) The notice must be published twice, with at least 6 days separating each publication.

(8) The published notice must contain:

- (a) the date, time, and place of the hearing or other action;
- (b) a brief statement of the action to be taken;
- (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
- (d) any other information required by the specific section requiring notice by publication.

(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(10) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

(11) If the newspaper fails to publish a second notice, the municipality must be considered to have met the requirements of this section as long as the municipality submitted the required information prior to the submission deadline and the notice was posted in three public places in the municipality that were designated by ordinance and, if the municipality has an active website, was posted on the municipality's website at least 6 days prior to the hearing or other action for which notice was required.

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

7-1-4135. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.

7-1-4141. (Temporary) Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

7-1-4141. (Effective July 1, 2024) Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality must be open to the public except as provided in 2-3-203.

(2) Subject to the requirements of 2-3-212, appropriate minutes must be kept of all public meetings and must be made available to the public for inspection and copying and meet the requirements of 2-3-214(2)(b).

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality must be open to the public except as provided in 2-3-203.

(2) Subject to the requirements of 2-3-214, appropriate minutes must be kept of all public meetings and must be made available on request to the public for inspection and copying.

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

Part 2. Open Meetings

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

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.

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.

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

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

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.

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.

2-3-214. (Temporary) Recording of meetings for certain boards. (1) Except as provided in 2-3-203, the following boards shall record their public meetings in a video or audio format:

- (a) the board of investments provided for in 2-15-1808;
- (b) the public employees' retirement board provided for in 2-15-1009;
- (c) the teachers' retirement board provided for in 2-15-1010;
- (d) the board of public education provided for in Article X, section 9, of the Montana constitution; and
- (e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.

(2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.

(3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in 5-11-1111 or through publication of streaming video or audio content on the respective board's website.

(b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

2-3-214. (Effective July 1, 2024) 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. If the board does not maintain a website, it shall maintain a social media page and provide a link to the recording on the social media page.

(c) 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.

(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.

Open Meetings Law

Montana's "sunshine laws" are described as among the most stringent in the nation. These laws are outlined in Article II Sections 8 (Right of participation) and Section 9 (Right to know) of the state's constitution. In [Title 2, Chapter 3](#), Public Participation in governmental Operations, the Montana Code Annotated describes provisions of the required "Notice and Opportunity to be Heard" in [Part 1](#), and "Open Meetings" in [Part 2](#). The Open Meetings law affords "reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency" ([2-3-201](#)).

There are four essential elements in the open meetings law:

1. If a quorum, defined as the number members legally required to conduct business, is convened by either physical presence or by means of electronic equipment ([2-3-202](#)) and,
2. Members will hear, discuss or act upon issues that it has jurisdiction over, ([2-3-202](#)), then,
3. The meeting must be open to the public and the press must be permitted to record the meeting ([2-3-211](#)) and,
4. Appropriate minutes of all meetings shall be kept and made available for the public ([2-3-212](#)).

Each governing board must adopt coordinated rules to facilitate public participation in decisions that are of significant interest to the public ([2-3-103](#)). These include a schedule of regular meeting times and agenda prepared and posted sufficiently in advance to provide notice of the topics to be discussed and actions to be considered. The public must also be afforded a reasonable opportunity to offer information and opinions, either orally or written, before final decisions are made.

A matter of significant public interest is defined as one "involving any non-ministerial decision or action which has meaning to, or affects a portion of the community." Discrepancies as to whether a meeting is a significant public interest should always err on the side of transparency and opportunities for public participation. Exceptions are detailed in [2-3-203](#) and include the following: whether the discussion relates to a matter of individual privacy and if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure; litigation when an open meeting would have a detrimental effect on the litigating position or; any judicial deliberations in an adversarial proceeding.

The agenda for a meeting, as defined in [2-3-202](#), must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the commission's jurisdiction. However, the commission may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).

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MINUTES OF MEETINGS

Forms of meeting minutes vary with different organizations. However, there is certain information that should always be included:

Title of Meeting (name of group, committee or organization)

- Place, date and hour
- Attendance (by roll call or observation)
- Procedure:
- Minutes of previous meeting – approved or corrected
- Reports
- Unfinished business
- New Business
- Public Comment on items not on the agenda
- Next meeting (if designated)
- Adjournment (hour)
- Signed by Secretary/Clerk
- Countersigned by President/Mayor

Always make a rough draft of the minutes before copying them into the minute book. No large erasures should appear in the minute book. If minutes are amended or corrected at the meeting at which they are read, the corrections should be put in red ink, or the amendments should be written on a separate page to be attached. No minutes should be rewritten after they have been read. They should stand as corrected.

The clerk or secretary of the meeting should sit near the chairperson or Mayor, or in a position to hear every word that is said. If unable to hear, the recorder should, by a signal, so inform the chairperson or Mayor who can interrupt the speaker and ask for a repetition of what has been said if he deems it of sufficient importance to do so.

Note late arrivals and early departures, because an important point may hinge on whether or not a certain person heard a certain discussion.

The more pre-knowledge that can be had of a meeting, the easier it will be to record the minutes.

Immediately obtain copies of all papers read or discussed at the meeting and write up the minutes as soon as possible.

Be sure to capture public comment on any public matter on the agenda and that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. Public comment

received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212 MCA.

Notes are taken “in depth”; but minutes are written in summary. Remember that what is done or accomplished at a meeting (or left unfinished) is of the utmost importance, **not what is said**. Therefore, be alert to recognize and record all definite decisions; all actions to be taken, by whom; and all business left pending.

During debates and discussions, summarize these, noting highlights, such as the “for” and “against” arguments and by whom.

- Motions: every motion must be recorded, its maker, its second and its final outcome.
- Reports: record the presentation, by whom and the final action of each, if any.
- Voting: record all voting, how taken, and the count (if countable). Voting is by these methods in this order of formality:
 - General (or silent) assent or consent
 - Voice – all in favor say aye
 - Show of hands (all in favor raise your hand)
 - Standing (to be counted)
 - Roll call (yeas and nays or for and against, registered)
 - Secret ballot (many use this?)

The tone of the minutes should be completely impersonal, with no comments from the clerk, such as “heated”, “lengthy” or “moving”.

Acknowledgement:

Standard handbook for Secretaries by Lois Hutchinson

**MONTANA CODE OF ETHICS
CONSTITUTION OF MONTANA -- ARTICLE XIII -- GENERAL PROVISIONS**

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Montana Code Annotated (2023)

**TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION
CHAPTER 2. STANDARDS OF CONDUCT**

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.

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.

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(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.

2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees.

A 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.

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.

2-2-105. Ethical requirements for public officers and public employees. (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

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(8)(a), may not use or permit the use of state funds for any advertisement

or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, 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.

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.

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.

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.

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.

COMMISSIONER OF POLITICAL PRACTICES

The Commissioner has jurisdiction over laws and rules pertaining to: Ethics ([Title 2, chapter 2, part 1](#)), Lobbying ([Title 5, chapter 7](#)) and Campaign finance and practices ([Title 13, chapters 35 and 37](#)).

Our Mission

We fairly and impartially carry out our assigned responsibilities monitoring and enforcing campaign finance and practices and government ethics standards. We serve the public and interested parties in a helpful and responsive way.

Commissioner of Political Practices
 1205 8th Ave P.O. Box 202401
 Helena, MT 59620-2401
 (Tel.) 406-444-2942
<http://politicalpractices.mt.gov/>

Montana Statutes on Nepotism
Montana Code Annotated (2023)
TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION
CHAPTER 2. STANDARDS OF CONDUCT
Part 3. Nepotism

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

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

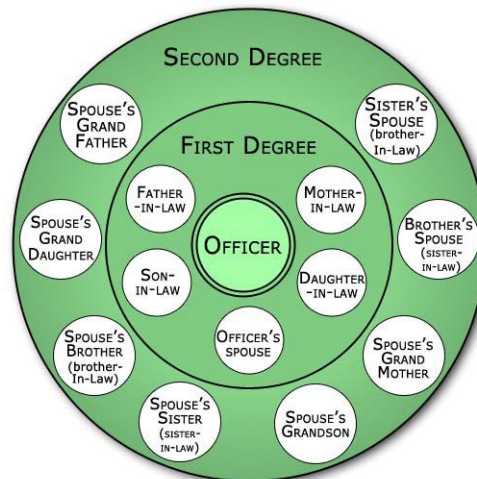
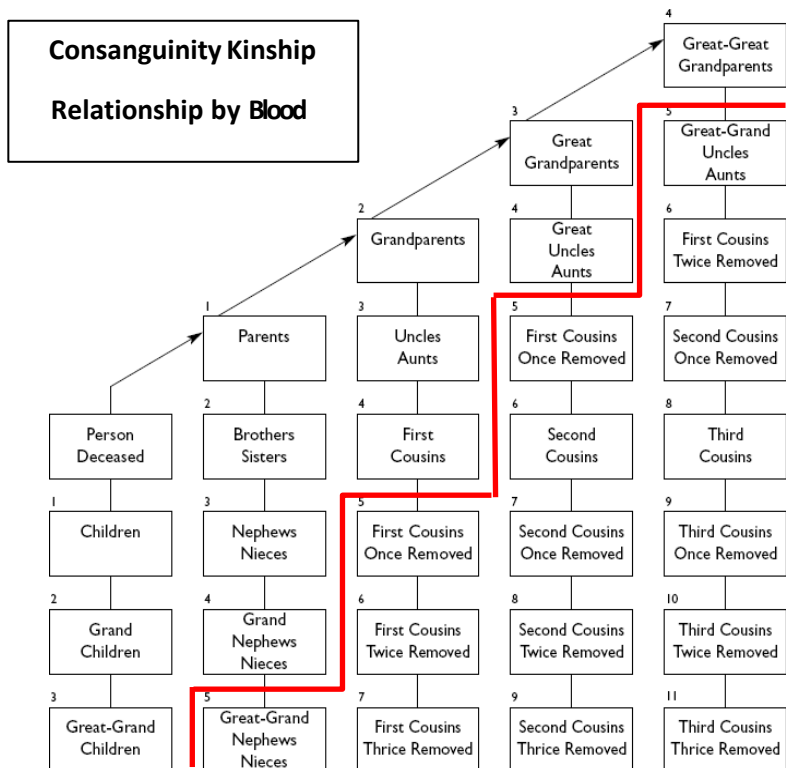
(1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of 2-2-303 and this section do not apply to:

- (a) a sheriff in the appointment of a person as a cook or an attendant;
 - (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
 - (c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;
 - (d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;
 - (e) the employment of election judges;
 - (f) the employment of pages or temporary session staff by the legislature; or
 - (g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.
 - (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)(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.

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.

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.



Affinity Kinship
Relationship by Marriage

General Board Statutes

Montana Code Annotated (2023)

TITLE 7. LOCAL GOVERNMENT CHAPTER 1. GENERAL PROVISIONS

Part 2. Boards

7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

- (a) the number of administrative board, district board, or commission members;
- (b) the terms of the members;
- (c) whether members are entitled to mileage, per diem, expenses, and salary; and
- (d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, a district board, or a commission may be assigned responsibility for a department or service district.

(b) An administrative board, a district board, or a commission may:

- (i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law; and
- (ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, a district board, or a commission must grant the administrative board, district board, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, a district board, or a commission may employ personnel to assist in its functions.

(3) (a) An administrative board, a district board, or a commission may be made elective.

(b) If an administrative board, a district board, or a commission is made elective, the election must be conducted as provided in Title 13, chapter 1, part 5.

(c) A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been elected and qualified.

(4) An administrative board, a district board, or a commission may not sue or be sued independently of the local government unless authorized by state law.

(5) (a) If administrative board, district board, or commission members are to be appointed, the members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy. A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified.

(b) The county commissioners shall maintain a register of appointments, including:

- (i) the name of the administrative board, district board, or commission;
- (ii) the date of appointment and confirmation, if any is required;
- (iii) the length of term;
- (iv) the name and term of the presiding officer and other officers of each administrative board, district board, or commission; and
- (v) the date, time, and place of regularly scheduled meetings.

(c) Terms for members of elected or appointed boards or commissions may not exceed 4 years. Unless otherwise provided by resolution or as provided in 7-11-1010, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

- (6) An administrative board, a district board, or a commission must consist of a minimum of 3 members and must have an odd number of members.
- (7) The resolution creating an administrative board, a district board, or a commission may provide for voting or nonvoting ex officio members.
- (8) Two or more local governments may provide for a joint administrative board, district board, or commission to be established by interlocal agreement.
- (9) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.
- (10) An administrative board, a district board, or a commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.
- (11) An administrative board, a district board, or a commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.
- (12) Unless otherwise provided by law, a person must be a citizen of the United States and a resident of the county to be eligible for appointment to an administrative board, a district board, or a commission. The county commissioners may prescribe by resolution additional qualifications for membership.
- (13) A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as provided by resolution.
- (14) A resolution creating an administrative board, a district board, or a commission must contain, if applicable, budgeting and accounting requirements for which the administrative board, district board, or commission is accountable to the county commissioners.
- (15) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board.

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

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

7-1-203. County commissioners to assume duties of administrative boards, districts, and commissions. (1) If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission.

(2) County commissioners, acting in the capacity of an administrative board, district, or commission may not receive any compensation in addition to their compensation as county commissioners.

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

7-1-205. Service on more than one special purpose district board authorized in small communities -- definitions. (1) In a small community a person may serve on more than one special purpose district board, regardless of whether the person is appointed or elected as provided by law.

(2) (a) A person seeking election to more than one special purpose district board may run for more than one position only if the person runs unopposed for all potential positions.

(b) If a position was unopposed at the time the person filed for the position and later becomes opposed during the course of an election campaign, the person running for more than one special purpose district board shall choose to run for one preferred special purpose district board and withdraw candidacy from all other special purpose district board positions.

(3) For the purposes of this section, the following definitions apply:

(a) "Small community" means an area that fully encompasses more than one special purpose district and includes fewer than 500 electors, as defined in **13-1-101**.

(b) "Special purpose district" has the meaning provided in **13-1-101**.

(c) "Unopposed" means the number of candidates at the time of the election for each special purpose district board position is equal to or less than the number of positions available on each respective board.

7-1-206. Local district board oversight — methods for redress. (1) (a) If at least 5% of the qualified electors that are served by a local government entity file a petition against the board of the local government entity for allegations that the board has not complied with statutes applicable to the governance, operation, and function of the board, including but not limited to a violation of public meeting law, the board member appointment or election process, or the actions and duties required of a board member, the petition must be filed with the governing body under whose authority the local government entity was created.

(b) The governing body under whose authority the local government entity was created shall remit petitions received under subsection (1)(a) to the county attorney. The county attorney shall evaluate the petition and shall provide a written notice of determination to the governing body, the board of the local government entity that is subject to the petition, and any petitioner who requests a copy. If the county attorney has a conflict of interest, the county attorney shall seek review by a prosecutor in another jurisdiction. If the county attorney or prosecutor who conducts a review as required in this subsection (1) determines the petition has merit, the local government entity shall participate in training provided by the local government center as provided in subsection (2).

(2) (a) The local government center shall develop a training curriculum appropriate to address the issues detailed in a petition referred by the county attorney to the local government center as provided in subsection (1)(b).

(b) The board of the local government entity shall participate in all relevant training provided by the local government center.

(3) The board of the local government entity shall remit all fees necessary for the training required in subsection (2) to the local government center.

(4) The local government center shall report to the local government interim committee, in accordance with 5-11-210, all petitions received that resulted in the development and delivery of training required under subsection (2).

(5) As used in this section, the following definitions apply:

(a) "Local government center" means the local government center provided for in 20-25-237.

(b) (i) "Local government entity" has the meaning provided in 2-7-501, except as provided in subsection (5)(b)(ii) of this section.

(ii) Local government entity does not include a county, consolidated city-county, incorporated city or town, or school district.

PARLIAMENTARY MOTIONS GUIDE

Based on Robert's Rules of Order Newly Revised (11th Edition) and www.jimslaughter.com

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

PRIVILEGED MOTIONS							
YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Adjourn	I move to adjourn	No	Yes	No	No	Majority	Yes
Take a break	I move to recess for	No	Yes	No	Yes	Majority	No
Register complaint	I rise to a question of privilege	Yes	No	No	No	None	No
Orders of the day	I call for the orders of the day	Yes	No	No	No	None	No

SUBSIDIARY MOTIONS							
YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Lay aside temporarily	I move to lay the question on the table	Yes	Yes	No	No	Majority	Negative vote only
Close debate	I move the previous question	No	Yes	No	No	2/3	Yes
Limit / extend debate	I move that debate be limited to...	No	Yes	No	Yes	2/3	Yes
Postpone to a certain time	I move to postpone the motion to...	No	Yes	Yes	Yes	Majority	Yes
Refer to a committee	I move to refer the motion to...	No	Yes	Yes	Yes	Majority	Yes
Amend a motion	I move to amend the motion by...	No	Yes	Yes	Yes	Majority	Yes
Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority	Affirmative vote only

MAIN MOTIONS						
YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE? RECONSIDER?
Bring business to motion	I move that (or "to")...	No	Yes	Yes	Yes	Majority Yes

No order of precedence. Arise incidentally and decided immediately.

INCIDENTAL MOTIONS						
YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE? RECONSIDER?
Enforce rules	Point of order	Yes	No	No	No	None No
Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority Yes
Suspend rules	I move to suspend the rules which...	No	Yes	No	No	2/3 No
Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3 Negative vote only
Divide motion / question	I move to divide the question	No	Yes	No	Yes	Majority No
Demand rising vote	I call for a division	Yes	No	No	No	None No
Parliamentary law question	Parliamentary inquiry	Yes (if urgent)	No	No	No	None No
Request information	A point of information, please.	Yes (if urgent)	No	No	No	None No

No order of precedence. Introduce only when nothing else pending.

RENEWAL MOTIONS						
YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE? RECONSIDER?
Take matter from table	I move to take from the table...	No	Yes	No	No	Majority No
Cancel or change previous action	I move to rescind / amend the motion...	No	Yes	Yes	Yes	2/3 or majority w/notice Negative vote only
Reconsider motion	I move to reconsider the vote on...	No	Yes	Varies	No	Majority No

2023 MONTANA CODE ANNOTATED
TITLE 7. LOCAL GOVERNMENT
CHAPTER 33
PART 21: FIRE DISTRICTS

Part Case Notes:

Permissible Scope of Fire District's Services: When a fire district is governed by a board of trustees, the board of trustees and the fire chief determine the scope of the fire district's services. *Bull Lake Fire District v. Lincoln County*, 2013 MT 342, 372 Mont. 469, 313 P.3d 174.

Extension of Immunity to All Rural Fire Districts Regardless of Method of Formation: Plaintiffs contended that under 7-33-2208, immunity for rural firefighters extended only to rural fire crews and fire companies established on the initiative of a county government under part 22 of this chapter, but not to crews and companies established in response to a petition by landowners pursuant to this part. The Supreme Court found, after examining the legislative history of 7-33-2208, no logic or reason for granting or withholding immunity to a rural firefighting unit based on the method of its origin and extended immunity to districts established under both part 22 and this part. Allegations of negligent acts and omissions in fire suppression techniques outside the scope of 7-33-2208 did not constitute a genuine issue of material fact sufficient to preclude summary judgment based on immunity. Noting the 1989 amendment to 7-33-2208, the court further impliedly extended immunity to fire companies organized under part 23 and fire service areas organized under part 24. *Hyde v. Evergreen Volunteer Rural Fire Dept.*, 252 M 299, 828 P2d 1377, 49 St. Rep. 259 (1992).

Part Attorney General Opinions:

Rural Fire District Not to Incorporate Under Nonprofit Corporation Act: Although the formation and operation of nonprofit corporations are generally controlled by the Montana Nonprofit Corporation Act (Title 35, ch. 2), the particular process relating to the creation and operation of fire districts is specifically mandated by Title 7, ch. 33, part 21. Therefore, a rural fire district may not be established or reestablished and operated under Title 35, ch. 2, in order to avoid personal liability. 43 A.G. Op. 2 (1989).

Provision of Fire Protection Services Outside City Limits: A city may contract with entities to provide fire protection services outside the city limits. 42 A.G. Op. 80 (1988).

Rural Firefighters -- Not Within Workers' Compensation Coverage: A firefighter in a rural fire district is not an "employee" as defined in 39-71-118 and hence is not within the Workers' Compensation Act. Similar benefits are available to him under the provisions of Title 19, ch. 12 (renumbered Title 19, ch. 17). 40 A.G. Op. 9 (1983).

7-33-2101. Rural fire districts authorized — petition. (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to 7-33-4115 and subsection (2) of this section, incorporated second-class or third-class city or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

(2) (a) Subject to 7-33-4115, second-class or third-class cities and towns may be included in the district upon approval by the city or town governing body.

(b) Subject to 7-33-4115, a second-class or third-class city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec.

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For interpretation of the law, please seek competent legal counsel.

Attorney General Opinions:

Question of Rural Fire District as Taxing Unit: A rural fire district operated by a board of trustees is a taxing unit within the meaning of 15-10-412 (now repealed); however, a rural fire district operated by the county and not by a board of trustees is not a taxing unit. 42 A.G. Op. 80 (1988).

Three-Year Contract -- Call-for-Bid Requirements: Fire districts are not subject to the statutory 3-year contract and call-for-bid requirements. 36 A.G. Op. 73 (1976).

Status of County Fire District Salaried Employees: The county has authority to establish and equip a fire district, to levy taxes to fund the district, to contract for fire protection, or to appoint trustees to manage the district. Full-time salaried employees of the fire district are employees of the county in the absence of an intervening employer, such as a city, town, or private fire service, and not volunteers. As such they are entitled to vacation, sick leave, and group insurance benefits. They are subject to hours of employment as provided by statute for county employees and have tenure rights consistent with tenure rights of other paid fire companies. 35 A.G. Op. 71 (1974).

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated second-class or third-class city or town to each registered voter and real property owner residing in the proposed district; and

(2) by publishing the notice as provided in 7-1-2121 or as provided in 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated second-class or third-class city or town.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 33, Ch. 349, L. 1985; amd. Sec. 64, Ch. 354, L. 2001; amd. Sec. 2, Ch. 499, L. 2007; amd. Sec. 4, Ch. 74, L. 2019.

7-33-2103. Hearing on petition -- decision. (1) (a) The board shall hear the petition at the time set or at any time within 5 days of the time set if reasonable notice of the postponement is given. The board may establish the district unless it determines that the petition bears insufficient signatures or, if originally sufficient, that by reason of written withdrawals of signatures it has become insufficient.

(b) Signatures may not be withdrawn fewer than 20 days before the date set for adoption of the petition.

(2) The board may adjust the boundaries of the proposed district to reflect the written request of any real property owner who resides in the proposed district for subtraction or annexation of parcels of the property owner's land adjacent to the boundary line of the proposed district. The written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 470, L. 1985; amd. Sec. 3, Ch. 499, L. 2007.

7-33-2104. Operation of fire districts. When a board of county commissioners establishes a fire district in any unincorporated territory or incorporated second-class or third-class city or town, the commissioners:

(1) may contract with a city, town, private fire company, or other public entity to furnish all fire protection services for property within the district; or

(2) shall appoint five qualified trustees to govern and manage the fire district.

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For interpretation of the law, please seek competent legal counsel.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 4, Ch. 499, L. 2007; amd. Sec. 5, Ch. 74, L. 2019.

Attorney General Opinions:

Response by Fire Service Organizations to Hazardous Materials Incidents: Unless otherwise provided by law, the decision to order a firefighter to respond to or investigate a hazardous materials incident is within the discretion of the supervising entity of each fire service organization. The State Fire Marshal (now the state fire prevention and investigation program of the Department of Justice) does not have specific rulemaking authority to prescribe which fire service organization should respond to such incidents. 42 A.G. Op. 104 (1988).

Trustee-Operated Fire District Liable for Indemnification: Employees of a fire district operated by trustees must be indemnified under the comprehensive state insurance plan and the Tort Claims Act by the fire district rather than by the county in which the fire district is located. 42 A.G. Op. 84 (1988), overruling a contrary holding in 35 A.G. Op. 71 (1974), and followed in 43 A.G. Op. 2 (1989).

Question of Rural Fire District as Taxing Unit: A rural fire district operated by a board of trustees is a taxing unit within the meaning of 15-10-412 (now repealed); however, a rural fire district operated by the county and not by a board of trustees is not a taxing unit. 42 A.G. Op. 80 (1988).

Rural Fire District Created After 1986 Not Subject to Property Tax Limitations: A rural fire district created after 1986 and established as a taxing unit is not subject to the property tax limitations of Title 15, ch. 10, part 4. There is no provision for new taxing units to limit their levies to their first year of existence or to 1986 amounts levied by another taxing unit. 42 A.G. Op. 80 (1988), followed in 42 A.G. Op. 109 (1988).

7-33-2105. Powers and duties of trustees. (1) The trustees:

- (a) shall prepare and adopt suitable bylaws;
 - (b) have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, including real property and emergency medical services and equipment, for the protection of the district;
 - (c) may appoint and form fire companies that have the same duties, exemptions, and privileges as other fire companies for retirement purposes only;
 - (d) shall prepare annual budgets and request special levies for the budgets. The budget laws relating to county budgets must, as far as applicable, apply to fire districts.
 - (e) may enter into contracts as provided in 7-33-2107; and
 - (f) may pledge income to secure financing of the district as provided in 7-33-2109.
- (2) All money received by the trustees must be deposited in the county treasurer's office and credited to the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 144, L. 1991; amd. Sec. 1, Ch. 443, L. 2001; amd. Sec. 5, Ch. 499, L. 2007.

Attorney General Opinions:

Application of Property Tax Limitation: If the board of trustees of a rural fire district determines that it must acquire real property and construct a fire hall in order to "adequately operate" the fire district and if it requires funding in addition to that otherwise allowed under 15-10-412 (now repealed), it may proceed to increase revenue under subsection (9) of that section. 42 A.G. Op. 126 (1988).

Preparation of Bylaws by Fire Service Area Trustees: If the County Commissioners appoint a board of trustees to govern and manage the affairs of a fire service area, the fire service area trustees must prepare and adopt suitable bylaws. 42 A.G. Op. 102 (1988).

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Financing Acquisition of Fire Equipment and Facilities: Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection. 38 A.G. Op. 87 (1980), followed in 42 A.G. Op. 126 (1988).

Power to Submit Budget to County Commissioners: Fire district trustees have the power to submit a proposed budget for capital outlay to the County Commissioners. 36 A.G. Op. 73 (1976).

- 7-33-2106. Details relating to board of trustees of fire district — election — qualified electors.** (1) (a) The five trustees initially appointed by the county commissioners hold staggered terms of office until their successors are elected or appointed and qualified as provided in this section.
- (b) The initial trustees' terms of office must be drawn by lot and include:
- (i) 3 years for one trustee;
 - (ii) 2 years for two trustees; and
 - (iii) 1 year for two trustees.
- (c) Upon expiration of the terms provided in subsection (1)(b), each subsequent trustee shall serve a 3-year term of office.
- (d) A term of office begins on the date of the trustee's election or appointment.
- (2) Trustee elections must be conducted in accordance with Title 13, chapter 1, part 5.
- (3) An appointment to fill a vacancy occurring during the term of office of a trustee must be made by the county governing body and the appointee shall hold office until the next trustee election.
- (4) An elector, as defined in 13-1-101, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.
- (5) Any person eligible to vote in the election may file a declaration of candidacy for the office of trustee. The declaration must be filed with the election administrator in the county conducting the election pursuant to 13-1-505 within the time period specified in 13-1-502.
- (6) If there is not a candidate for one or more trustee offices, the board of county commissioners shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.
- (7) The trustees shall organize by choosing presiding officers and appointing one member to act as secretary.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 213, L. 1979; amd. Sec. 390, Ch. 571, L. 1979; amd. Sec. 1, Ch. 27, L. 1981; amd. Sec. 1, Ch. 502, L. 1983; amd. Sec. 23, Ch. 250, L. 1985; amd. Sec. 1, Ch. 146, L. 1991; amd. Sec. 6, Ch. 591, L. 1991; amd. Sec. 6, Ch. 254, L. 1999; amd. Sec. 6, Ch. 499, L. 2007; amd. Sec. 161, Ch. 49, L. 2015; amd. Sec. 7, Ch. 372, L. 2017.

Attorney General Opinions:

Officers to Remain Until Successors Properly Qualified: Officers of hospital, fire, irrigation, and drainage districts whose terms were due to expire in the spring of 1980 are entitled to remain in office until their successors are properly qualified following an election held in November 1980. 38 A.G. Op. 74 (1980).

7-33-2107. Contracts for fire protection services. (1) The trustees of a fire district may enter into contracts for fire protection services.

(2) All money received from contracts must be deposited in the county treasurer's office and credited to the fire district fund holding the contracts.

(3) The relationship between the fire district and the entity with which the district has contracted is that of an independent contractor.

History: (1) thru (4) En. Sec. 1, Ch. 107; L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; Sec. 11-2010, R.C.M. 1947; (5) En. Sec. 3237, Pol. C. 1895; re-

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en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; Sec. 11-2008, R.C.M. 1947; R.C.M. 1947, 11-2008(part), 11-2010(c); amd. Sec. 7, Ch. 499, L. 2007.

- 7-33-2108. Mutual aid agreements -- request if no agreement exists -- definitions.** (1) A mutual aid agreement is an agreement for protection against disasters, incidents, or emergencies.
- (2) Fire district trustees may enter mutual aid agreements with the proper authority of:
- (a) other fire districts;
 - (b) unincorporated municipalities;
 - (c) incorporated municipalities;
 - (d) state agencies;
 - (e) private fire prevention agencies;
 - (f) federal agencies;
 - (g) fire service areas;
 - (h) governing bodies of other political subdivisions in Montana; and
 - (i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.
- (3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209.
- (4) As used in this section, "incidents", "disasters", and "emergencies" have the meanings provided in 10-3-103.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(d); amd. Sec. 2, Ch. 149, L. 1993; amd. Sec. 1, Ch. 46, L. 1997; amd. Sec. 1, Ch. 292, L. 2007.

- 7-33-2109. Tax levy, debt incurrence, and bonds authorized -- voted levy for volunteer firefighters' disability income or workers' compensation coverage.** (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.
- (2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage or workers' compensation coverage for the volunteer firefighters of the district as provided in 7-6-621.
- (3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.
- (4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.
- (5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 459, L. 1991; amd. Sec. 1, Ch. 170, L. 1995; amd. Sec. 70, Ch. 584, L. 1999; amd. Sec. 24, Ch. 29, L. 2001; amd. Sec. 2, Ch. 443, L. 2001; amd. Sec. 2, Ch. 485, L. 2007; amd. Sec. 8, Ch. 499, L. 2007; amd. Sec. 2, Ch. 255, L. 2011.

Case Notes:

Constitutionality: The provisions of this section, as amended in 1953, for levy of a special assessment upon property within districts without notice to property owners were unconstitutional as being in direct conflict with the Due Process of Law Clause in Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, 1972 Mont. Const.), and the first clause of the 14th amendment to the United States Constitution. *Great N. Ry. v. Roosevelt County*, 134 M 355, 332 P2d 501 (1958), distinguished in *Bacus v. Lake County*, 138 M 69, 354 P2d 1056 (1960).

Attorney General's Opinions

City Annexation of Rural Fire District — Loan Obligation Not Payable by Tax Incurred Prior to Annexation: A rural fire district has no authority to levy taxes against property that is not within the district boundaries, and recent legislative enactments did not extend the power of a rural fire district to allow taxation to retire nonbonded debts. A reduction in the amount of property subject to tax to retire a loan would not in any way diminish or change the responsibilities of the parties under the loan contract. Therefore, when a city annexes territory that has been part of a rural fire district, the district may not tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to annexation. 46 A.G. Op. 8 (1995).

Proportion of Vehicle-Related Taxes Applicable to Rural Fire Districts: Vehicle-related taxes referred to in subsection (1) of 61-3-509 must be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of the districts. For distribution entitlement purposes, the residence or assignment address appearing on the certificate of registration determines if a particular vehicle is within a district's boundaries. 43 A.G. Op. 4 (1989).

Application of Property Tax Limitation: If the board of trustees of a rural fire district determines that it must acquire real property and construct a fire hall in order to "adequately operate" the fire district and if it requires funding in addition to that otherwise allowed under 15-10-412 (now repealed), it may proceed to increase revenue under subsection (9) of that section. 42 A.G. Op. 126 (1988).

"Property" to Include Real and Personal Property: The term "property" as used in this section applies to all forms of real and personal property ordinarily subject to ad valorem taxation by counties. 42 A.G. Op. 109 (1988).

Financing Acquisition of Fire Equipment and Facilities: Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection. (See 1995 amendment.) 38 A.G. Op. 87 (1980), followed in 42 A.G. Op. 126 (1988).

7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) A right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan or payments provided under Title 19, chapter 17, may not be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: En. Sec. 1, Ch. 193, L. 1979; amd. Sec. 1, Ch. 64, L. 2011.

7-33-2111. Fire district capital improvement fund authorized. The trustees of a fire district may establish a capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 224, L. 1991; amd. Sec. 3, Ch. 443, L. 2001; amd. Sec. 6, Ch. 35, L. 2003.

Attorney General Opinions:

City Annexation of Rural Fire District -- Loan Obligation Not Payable by Tax Incurred Prior to Annexation: A rural fire district has no authority to levy taxes against property that is not within the district boundaries, and recent legislative enactments did not extend the power of a rural fire district to allow taxation to retire nonbonded debts. A reduction in the amount of property subject to tax to retire a loan would not in any way diminish or change the responsibilities of the parties under the loan contract. Therefore, when a city annexes territory that has been part of a rural fire district, the district may not tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to annexation. 46 A.G. Op. 8 (1995).

Proportion of Vehicle-Related Taxes Applicable to Rural Fire Districts: Vehicle-related taxes referred to in subsection (1) of 61-3-509 must be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of the districts. For distribution entitlement purposes, the residence or assignment address appearing on the certificate of registration determines if a particular vehicle is within a district's boundaries. 43 A.G. Op. 4 (1989).

Application of Property Tax Limitation: If the board of trustees of a rural fire district determines that it must acquire real property and construct a fire hall in order to "adequately operate" the fire district and if it requires funding in addition to that otherwise allowed under 15-10-412 (now repealed), it may proceed to increase revenue under subsection (9) of that section. 42 A.G. Op. 126 (1988).

"Property" to Include Real and Personal Property: The term "property" as used in this section applies to all forms of real and personal property ordinarily subject to ad valorem taxation by counties. 42 A.G. Op. 109 (1988).

Financing Acquisition of Fire Equipment and Facilities: Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection. (See 1995 amendment.) 38 A.G. Op. 87 (1980), followed in 42 A.G. Op. 126 (1988).

7-33-2112. Minutes. The board administering and operating the district shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204.

History: En. Sec. 20, Ch. 262, L. 2015.

7-33-2113 through 7-33-2115 reserved.

7-33-2116. Payment of partial salary to rural firefighter injured in performance of duty. (1) A full-paid firefighter who is an employee of a rural fire district and who is injured in the performance of the firefighter's duty must be paid by the fire district the difference between the firefighter's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

(3) This section does not apply to a volunteer firefighter or a part-paid firefighter.

History: En. Sec. 1, Ch. 168, L. 2011.

MONTANA CODE ANNOTATED
TITLE 7. LOCL GOVERNMENT
CHAPTER 33. FIRE PROTECTION
PART 20. FIRE CHIEF

7-33-2001. Fire chief -- powers and duties. (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

- (a) development and implementation of agency programs and procedures;
- (b) performance of agency personnel;
- (c) preventing outbreak of fires;
- (d) minimizing danger to persons and damage to property caused by fires; and
- (e) providing and managing emergency services that are established by the agency and

that are consistent with national standards. These services may include but are not limited to:

- (i) fire suppression;
- (ii) medical aid;
- (iii) hazardous materials response;
- (iv) ambulance service; and
- (v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

- (a) enter any property;
- (b) prohibit any person, vehicle, or thing from approaching the scene;
- (c) remove or cause to be removed from the scene of the fire or other emergency any

person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief **may** investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief **may** take immediate charge of all physical evidence relating to the cause of the fire and **may** pursue the investigation to its conclusion.

(c) The fire chief **may** investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief **may** establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

(i) regular examination of fire hazards; and

(ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief **may** establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief **shall** report all fires to the department of justice and **shall** use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and **may** use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments.

History: En. Sec. 1, Ch. 167, L. 2007; amd. Sec. 1, Ch. 171, L. 2009.