

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 (2021)

Title 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 3. PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1. Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

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

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in [2-3-202](#), must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines

2-3-114. Enforcement -- attorney fees. (1) The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the person learns, or reasonably should have learned, of the agency's decision.

(2) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees.

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. 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.

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

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

Part 3. Use of Electronic Mail Systems

2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- fees prohibited.(1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which [2-3-111](#) applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet; or
- (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to [2-6-1003](#), disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in [2-4-302](#)(2)(a)(ii). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

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](#).

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
 - 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 chairman 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 chairman 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.

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

Title 76. LAND RESOURCES AND USE
CHAPTER 15. CONSERVATION DISTRICTS
Part 1. General Provisions

76-15-101. Legislative determinations. It is declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon the occupier's lands causes a washing and blowing of soil and water from the occupier's lands onto other lands and makes the conservation of soil and control of erosion on other lands difficult or impossible;

(2) that the consequences of soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches, the loss of fertile soil material in dust storms, the piling up of soil on lower slopes and its deposit over alluvial plains, the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills, the deterioration of soil and its fertility, the deterioration of crops and range cover grown on the land, declining acre yields despite development of scientific processes for increasing yields, the loss of soil and water that causes destruction of food and cover for wildlife, a blowing and washing of soil into streams that silts over spawning beds and destroys water plants, diminishing the food supply of fish, a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures, an increase in the speed and volume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death, the impoverishment of families attempting to operate eroding and eroded lands, damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, and rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C); amd. Sec. 2525, Ch. 56, L. 2009.